June 10, 2014

Syracuse, New York

Hon. Greg Walden, Chair
Subcommittee on Communications and Technology
Energy and Commerce Committee
United States House of Representatives
Washington, D.C.

Re: #CommActUpdate

Mr. Chairman and members of the subcommittee:

These comments address several of the larger issues raised in the Subcommittee's three White Papers. I submit the comments herein on my own behalf. They represent over 30 years of watching the communications industry evolve and its regulators struggle to keep up. I hope these thoughts will be helpful in your deliberations. I am happy to elaborate on any of the ideas or statements made here.

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Comments Regarding White Papers for Communications Act Update
Submitted by Patricia Hirl Longstaff

What is the problem?

As the subcommittee White Papers (and many other observers) have made clear, the various industries known collectively as the communications/information sector are undergoing profound changes and evolving in ways that are impossible to predict. In the face of all this change we continue to analyze legal and policy questions by asking where a service falls with regard to regulatory boxes that were established early in the twentieth century when industries like telephony and television seemed to be separate industrial species that should have separate regulatory systems. In other words, the first question in any public policy analysis has been the equivalent of "Is it a duck?" And increasingly the answer is, "Don't know." This leads to regulatory paralysis that puts many crucial questions into the courts where judges must make decisions with little to guide them except the laws that were made back when broadcasters did not have cell phone apps. These comments propose a new framework for communications regulation that is based on things that are common to all communications technologies. These comments also examine the benefits of looking to other ecosystems to develop new goals for competition policy.

Where does this proposal come from?

The idea of using information theory for communication regulation was first published in 1994 by the Harvard Program on Information Resources Policy[1] while the author was a graduate student at Harvard. It became a chapter in her book The Communications Toolkit: How to Build or Regulate Any Communications Business.[2] She spent the first part of her career as a lawyer for communications companies and is now the David Levidow Professor of Communications Law and Policy at the Newhouse School of Public Communications at Syracuse University. She received a Fulbright to help UNESCO think about Internet regulation in 2004. She recently spent a year at Oxford writing about managing/regulating organizations dealing with high uncertainty. She is a former member of an advisory committee on international communication regulation for the US Department of State and a regular speaker at conferences around the world. She has not been employed by or paid by any company or organization that may be impacted by this proposal for over 20 years.

What is this proposal?

These comments suggest two ideas that take communication regulation and competition policy back to the basics. This will allow regulators to focus on the things about communication that will "…stay put and won't be blown away by the winds of change."[3] Thus, we look at the basic

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[1] *Information Theory as a Basis for Rationalizing Regulation of the Communications Industry*, Program for Information Resources Policy and Harvard University, Cambridge MA, June 1994. http://www.pirp.harvard.edu/pubs_pdf/longsta/longsta-p94-4.pd

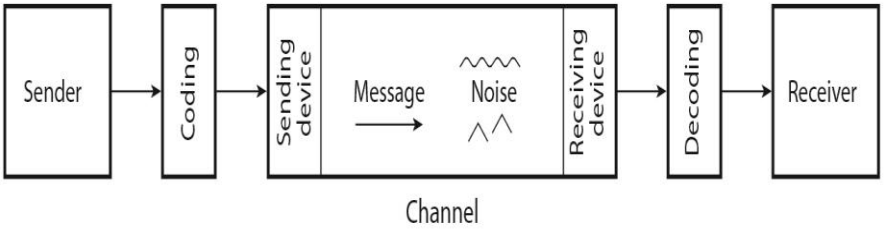
[2] Longstaff, P., *The Communications Toolkit: How to Build or Regulate Any Communications Business*, MIT Press, 2002. An interdisciplinary work that looks for patterns in the development of communications industries. Aimed at an international audience of regulators and executives.

[3] This metaphor was coined by Professor Anthony Oettinger during a lecture at Harvard University in 1994.

components of all communication and the basic workings of completion and cooperation in many systems.
It is important to stress that this proposal does not dictate particular outcomes for any policy question nor does it mandate that policy makers in all jurisdictions make the same choices. But it does provide a universal framework for these discussions and makes interstate and international coordination more efficient when that is deemed appropriate.

Every communication process can be broken down to a very basic model. All of the elements of this model are present in each communication process and may be present on multiple levels or at multiple stages of the process. It is called Information Theory and it has been around since 1948.[4]

The basic model of communication



All modern complex communication systems are refinements or elaborations on these concepts including print, broadcasting, satellite, cable, and apps on smartphones. So regulators would not ask, "Is it broadcasting?" but would, instead, ask if it a service that provides messages, or channels, or access to stored messages, etc.

But no communication industry/firm operates in a vacuum. Many scholars and practitioners (and the White Papers of this proceeding) have acknowledged that the formerly distinct communications industries now operate in a larger system that is often referred to as an ecosystem. This allows us to acknowledge the interconnections between the players and their evolution in the face of new challenges. Four key groups of players have been identified as part of the ICT ecosystem. (These groups correspond closely to the model proposed there.)

- Telecom equipment providers (who produce items such as telecommunication switches, routers or mobile phones),
- Network operators (who operate the channels: telecoms, cable and satellite networks),
- Content and application providers,
- Final consumers.[5]

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4 See, Shannon, Claude, E., "A Mathematical Theory of Information," *Bell System Technical Journal***,** v.27, 1948, pp. 379-423, 623-56; Liversidge, Anthony, "Interview, Claude Shannon," *Scientific American*, January 1990, pp. 22-22B; Pierce, John R., *An Introduction to Communication Theory, Symbols, Signals and Noise*, Dover Publications, Inc., New York, 1980.

5 Fransman, M. (2010): The New ICT Ecosystem: Implications for Policy and Regulation, Cambridge: Cambridge University Press.

These players interact within their environment which is shaped by the institutions that set the 'rules of the game' and thereby shape the players' behavior.[6] The institutions that are important to the ICT ecosystem include regulators, financial institutions, and competition authorities. They are all interconnected and constantly evolving in response to each other.

Regulation of competition

Looking at this sector as an ecosystem has other advantages. We can look to natural ecosystems for clues about how competition and cooperation work in rapidly evolving systems. For example, it is important to look at a system as a whole and to anticipate that competition can lead to cooperation (companies get bigger) and cooperation can enhance competition if it enables small firms to compete with big ones.[7] In addition, it is often important to take into account where an industry is in its' life cycle.

It has been widely observed by business scholars and economists that organizations go through cycles. Various authors have identified three to seven of these stages but all include the concept of a beginning, middle, and end. For example, "Startup/Growth/Decline"[8] or "Seed/Startup/Growth/Established/Expansion/Decline/Exit."[9] Or, perhaps the classic description of the cycle as "Entrepreneurial/Exploitation/Conservation."[10] These same observers have noted that organizations take on very different characteristics at the various stages and have different needs. Fascinatingly, the same stages and characteristics are often seen in ecological systems. Ecologists have discovered that the management of these systems requires that the manager know not only which cycle the system being managed is in but which cycle and competitors or cooperators are in because the cycles will be interacting and adapting to each other and the larger environment.

The "adaptive cycle" used here (Figure 1) posits four different stages of system behavior and structure (Gunderson and Holling 2002; Holling 2001) that are very similar to those identified in

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6 North, D. (1990): *Institutions, Institutional Change and Economic Performance,* Cambridge: Cambridge University Press.

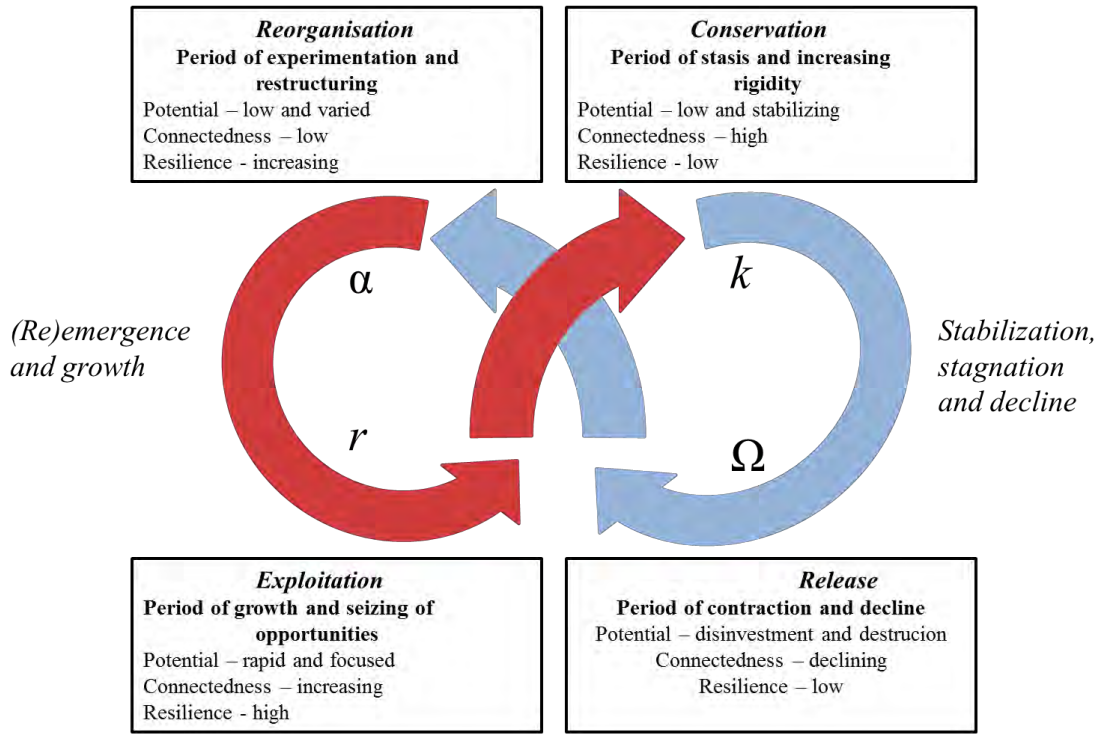
7 See, e.g., Longstaff, P.,
Competition and Cooperation: From Biology to Business, Harvard University Program for Information Resources Policy (1998) http://www.pirp.harvard.edu/pubs_pdf/longsta/longsta-p98-4.pdf
and; *The Puzzle of Competition in the Communications Sector: Can Complex Systems be Regulated or Managed?*" Harvard University Program for Information Resources Policy, (2003).
http://www.pirp.harvard.edu/pubs_pdf/longsta/longsta-p03-1.pdf

8 Shirlaw, D. (2011), "A guide for every business owner to Thrive, not just Survive through the biggest depression in 100 years", available at: http://www.shirlawscoaching.co.uk/storage/ebookpdf/w-shaped-recovery/Shirlaws%20Business%20Book%20-%20Navigate%20a%20W-shaped%20Double%20Dip%20Recession.pdf.

9 Zahorsky, D. (2011), "Find Your Business Life Cycle", available at: http://sbinformation.about.com/cs/marketing/a/a040603.htm

10 Baron, J. N., M. Burton, M. Diane, and M.T. Hannan. 1998. Engineering bureaucracy: The genesis of formal policies, positions, and structures in high-technology firms. *The Journal of Law, Economics, and Organization*, 15 (1): 1-41.

business literature. One important aspect about cycles is recognizing that things happen in different ways according to the phase of the cycle the system happens to be in.



This way of seeing an industry or a firm (as art of a larger system with individual and groups that are in different phases of a cycle) looks like it will make competition regulation much more difficult, and it will require a wider analysis in many cases. But it will make this regulation more effective in the long run and give companies more clues about what the regulator is likely to find illegal.

Who will like this proposal? Who will NOT like it?

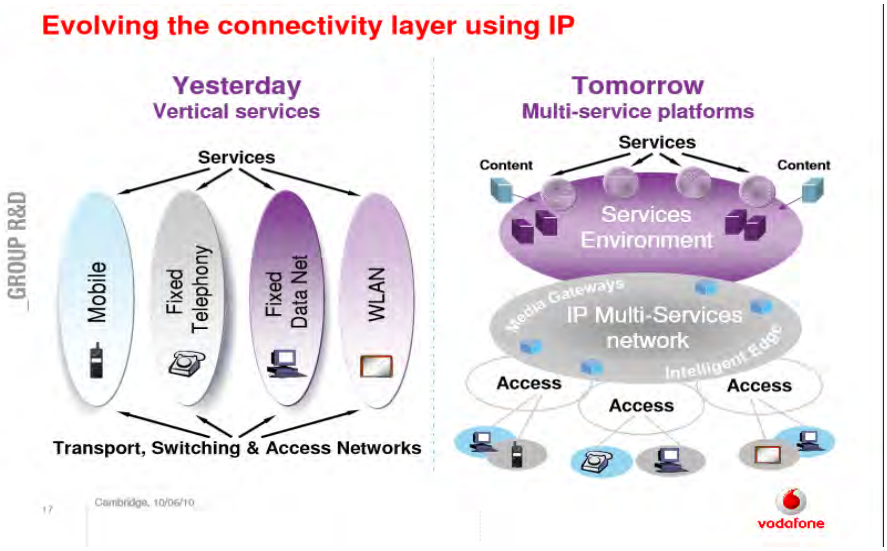
This proposal does not advocate for or vilify any particular technologies or the people who operate them. It does not attempt to predict the future or clear a regulatory path for a particular company or technology.

The ideas presented here will be welcomed by those who would like to see a more coherent structure for communications regulation, including regulators who can now focus on public policy goals and not technology. It will be welcomed by citizens (and those who advocate for them) because they can now make more sense of the regulatory landscape and how it affects their lives. In the beginning, it would require some public education about the new system but because it is based on the fundamentals of communication, it can be used for a long, long time.

These ideas will be opposed by those who are happy with the current state of regulatory gridlock. And for companies and industries that now face uncertainty at every turn this proposal may seem

like one more unknown. But it even in the short term it will be easier to adjust to this regulatory model than to new constraints that are bolted onto current regulations.

The idea of a shared model of the communications sector may be resisted by some who see the communication industries from their unique perspectives. For example, the "telephone" industry often sees its' business as a series of "layers." But these layers have analogs in the model suggested here. An example is presented below.[11]



How could these ideas be implemented?

An evolutionary process for changing the regulatory landscape would seem to make more sense than one that would involve the massive amounts of bloodshed (in this case financial hemorrhaging) generally associated with revolutionary change. An evolutionary process will also allow for mid-course corrections and adaptation to circumstances that are currently unforeseeable. The analytical framework proposed here could be used by any court, legislative body or regulatory agency which finds it necessary to rationalize or harmonize the regulatory, common law or constitutional principles applicable to the many new communications technologies that are emerging and converging in the global marketplace. A gradual, evolutionary implementation of these communication elements as the universal framework for regulation will also facilitate discussion of these issues on a global level since not all countries will engage these issues at the same time or with the same priorities.

It is hoped that the Congress will engage in a long-term effort to identify ways to regulate systems that are complex and adapting rapidly to changes in their environments. This will not just be a problem for the communications sector. New advances in fields such biotechnology will also require regulatory frameworks that move as fast as what they are trying to regulate. It will

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[11] From a presentation given by Prof. Michael Walker, then head of Group R&D at Vodafone in 2010. http://www.cambridgewireless.co.uk/Presentation/Mike%20Walker%20Mobile%20Internet%20-%20better%20than%20fixed%2010th%20Jun%202010.pdf

certainly be the case that some laws will have to be stable in order to give the system some predictability, but others will have to flex in ways that further public policies. Fortunately, there are other systems (human and technical) where we can look for clues. Information theory has the potential to give us basic laws for the communications sector that can be stable. Looking at competition as a process in a larger ecosystem that changes rapidly can give us the flexibility to regulate important aspects of industries that are crucial to all citizens.

Respectfully submitted,

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The Honorable Fred Upton, Chairman
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Dear Representative Upton, Rep. Walden, Rep. Waxman, Rep. Eshoo, and Committee Members:

MediaFreedom.org is a free market-oriented 501(c)(3) nonprofit, which works to minimize the Federal Communications Commission's regulatory imprint on U.S. Internet policy. MediaFreedom urges policymakers to more confidently rely on today's technological evolution, industry best practices and peer group policing, consumer education and transparency tools, marketplace competition, and presently available enforcement laws to protect consumers from actual, not conjectured, harm. We believe that this approach better serves consumers and the marketplace than do new laws or regulations when addressing most marketplace issues that arise.

The ever-evolving communications landscape is healthy and thriving, ably serving consumers with what they want and need. This is due in no small measure to congressional policy – clearly stated throughout the Telecommunications Act of 1996 – which has sought to "*…provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans…*"

As explosive as the Internet's growth has been over the past 18 years, FCC implementation of Congress' policies, as well as other actions, are undermining the '96 Act's goals, adversely affecting, in particular, the vibrant and competitive open Internet.

To this end, MediaFreedom briefly proposes the following:

> **Title-based regulatory distinctions must go:** The convergence of communications services and technologies has made the FDR-era approach of service-based regulation (e.g., Title II, III and VI of the Communications Act of 1934) largely obsolete. Given the rapid and ongoing pace of convergence, a more rational "regulatory" schema would eliminate these service-based distinctions and move to a "consumer harm" standard, based in antitrust law. Buttressing this change would be reliance on increased industry self-regulation, technical collaboration, alternative dispute resolution mechanisms, community policing and expert third-party oversight – all tools which have guided the Internet's growth since the

medium's inception, well before Net Neutrality came into being. Under this system, regulation built on prophylaxis would give way to enforcement, which would address what factually occurs in the real world, further aided by peer policing. This both protects consumers from actual harm, and frees up more companies to take risk and innovate in a more permissionless and flexible manner, boosting competition to the benefit of American consumers.

Taxation and similar barriers must be kept to a minimum: Though broadband access is nearly universal, Internet adoption remains problematic: One in seven Americans is not online. Perhaps ironically, as policymakers inform us just how "essential" the Internet is for daily living, regressive taxes – or those policies that have the same effect – have placed obtaining communications services out of reach for many, especially society's most marginalized citizens. To be sure, state and local taxation treats many communications services as if they were "sinful" items like alcohol and tobacco, resulting in taxes topping 20% or more for such services in many states. While states must be free to enact tax policy as they see fit, even if those policies may be wrong, Congress can do something directly and quickly to keep choking taxes off of the Internet by immediately passing a permanent Internet Tax Freedom Act. Additionally, as the FCC rewrites its dubious Net Neutrality rule, Congress – if it cannot stop the FCC from moving forward on Net Neutrality – should urge the agency to allow specialized agreements between edge providers and ISPs, thereby placing the costs of specific network upgrades on the cost causers, not average citizens who, under the previous, illegal rule, were stuck subsidizing Silicon Valley for services they did not use. Bottom line: If the Internet is "essential," government taxation and similar barriers should be kept to an absolute minimum to improve adoption. Where adoption thrives, competitive response to it will grow, too.

Reform the merger review process: The fractured merger review process is broken, it working primarily through dark room deals that extort public policy and other concessions, which could not be achieved in an open, democratic process. Congress should shut the racket down; give it to a single agency to administer (such as the Federal Trade Commission); put it on a up-or-down vote, 90-day shot clock; and strictly limit the approval process to address the narrow competitive concerns at hand. A merger review process that presents an open trough of opportunity for competitors, "consumer activists" and policymakers to arbitrage for their own gain greatly harms companies' ability to respond to fickle marketplace demands. This essentially untoward, undemocratic shakedown does not serve the "public interest".

More spectrum, please: Broadband competition comes in many different flavors. Driven by powerful smart phones, tablets and their apps, as well as expanding wireless LTE networks and Wi-Fi connectivity, over 65% of U.S. broadband connections are mobile/wireless. This growth, however, is being severely tested

by the lack of usable spectrum, the lion's share of which is hoarded by the government. Though the FCC is working, albeit fitfully, to address the need for more licensed and unlicensed spectrum, the federal government – which essentially owns 85% of the spectrum, but effectively uses less than 10% of it – stands in the way of carriers and the general public from accessing more. Not only is this wasteful – with the raw resource enabling wireless to flourish being strictly rationed and thus squandered – it has a negative effect on broadband competition, too. Consequently, Congress should put more pressure on the FCC and the National Telecommunications & Information Administration to more swiftly resolve the technical and other outstanding issues that exacerbate the government-created spectrum crunch. Quite simply, with a greater amount of licensed and unlicensed spectrum available, more competitive broadband options will be available to U.S. consumers.

The FCC's Net Neutrality rule must be stopped: MediaFreedom has long been a vocal critic of the FCC's efforts to impose Net Neutrality regulation. Presently, the FCC is rewriting the (needless) regulation to accord with the DC Circuit's recent ruling, which made key parts of it illegal. Yes, the Commission's new proposal moves the rule in a more reasonable direction, potentially allowing (once banned) priority agreements between edge providers and ISPs. But, don't be fooled – this is just the lesser of two evils. No matter how one cuts it, the Commission's "solution" to a problem that will never exist will one day enable the agency to heavily regulate the Internet and its ecosystem.

If the FCC reclassifies ISPs as Title II common carriers, reclassification also brings the unregulated edge into play because many of its functions look and act like common carriage. This catnip will prove too tempting for the FCC, making it just a matter of time, or change in administration, before the edge gets regulated under Title ll (if the FCC arrives at this rule via its Net Neutrality rewrite).

Perhaps more troubling than this, though, is the FCC's proposal to use § 706 of the '96 Act to encourage deployment of broadband infrastructure, allowing the Commission to impose rules just shy of Title ll to preserve "Internet openness," as well as facilitate the so-called "virtuous circle" of edge innovation the FCC believes has grown the medium.

The DC Circuit's recent Net Neutrality majority opinion, written by Judge David S. Tatel, approvingly lays out the FCC's regulatory algorithm as such:

> "Internet openness, [the FCC] reasoned, spurs investment and development by edge providers, which leads to increased end-user demand for broadband access, which leads to increased investment in broadband network infrastructure and technologies, which in turn leads to further innovation and development by edge providers. If, the Commission continued,

> broadband providers were to disrupt this 'virtuous circle' by '[r]estricting edge providers' ability to reach end users, and limiting end users' ability to choose which edge providers to patronize,' they would 'reduce the rate of innovation at the edge and, in turn, the likely rate of improvements to network infrastructure.'"

But, as Judge Laurence Silberman (who concurred in part and dissented in part on the ruling) rightly points out, that's a big problem because:

> "[A]ny regulation that, in the FCC's judgment might arguably make the Internet 'better,' could increase demand. I do not see how this…prevents § 706 from being carte blanche to issue any regulation that the Commission might believe to be in the public interest."

Using the court-approved formula for its new § 706-oriented Net Neutrality rule (which looks like the probable result of the rule's rewrite), it seems that any player who can affect "Internet openness" or edge innovation could be hauled before the FCC and regulated into obeisance if the Commission so determined. Any player, not just those who transmit communications and data. Congress cannot have intended this perverse outcome, which clearly does not comport with the '96 Act's pro-competitive, deregulatory policy framework.

Because Supreme Court precedent gives agencies like the FCC an immense amount of deference to do what they want, the only solution to the Commission's Net Neutrality "solution" is for Congress to stop the FCC from going forward on Net Neutrality. With the entire Internet ecosystem under the boot of the unelected Commissioners at the FCC, permissionless innovation will end, undermining – not boosting – broadband infrastructure deployment and competition. This type of control thwarted innovation and competition for decades under the old Communications Act. Given the rapid pace of technological change and convergence today, there is even less reason to believe that returning to such a "mother-may-I" regime will boost competition and flexibly serve U.S. consumers now and in the future.

MediaFreedom wants to thank the Committee for the opportunity to comment on this important matter, and we stand ready to offer any assistance as may be needed to help the Committee further understand our positions.

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MICROSOFT'S RESPONSE TO THE ENERGY AND COMMERCE COMMITTEE WHITE PAPER CONCERNING COMPETITION POLICY AND THE ROLE OF THE FEDERAL COMMUNICATIONS COMMISSION

June 13, 2014

Since its origin, the Federal Communications Commission's role has included an element of regulating entities with market power to further the greater public interest. The FCC's role also has involved tracking, defining, and promoting competition within the communications industry. The Commission has undertaken its role through decades of innovation and change.

Today there is a significant evolution in communications technologies that is producing new services, products, and offerings and affording consumers new ways to communicate. Indeed, technological evolution itself has proven to be an enduring concept in communications; change is a constant not a novelty. There remains a need to protect and advance the public interest in the context of competition policy so that all Americans realize the promise this generation of change can offer. Where the marketplace is functioning well, policy makers should resist intruding into marketplace dynamics. But, policy makers must stand ready to respond where markets are not functioning properly.

Competition Policy Is Only One of Many FCC Responsibilities

As the white paper references, some have suggested that the FCC should transition to an enforcement agency model. In considering whether an enforcement agency model is appropriate for the FCC, however, the entirety of the FCC's role in public policy should be considered. The FCC has a number of fundamental responsibilities that may not be addressable through an enforcement-only model.

As a first example, the Commission is – and always has been – charged with resolving issues in the communications industry that the market fails to address – or does not address adequately. In some cases, this failure of the market manifests itself in the lack of a privately-motivated marketplace for collectively valued services and features. Thus, the Commission requires access to emergency calling and location services, oversees programs for disseminating emergency alerts, and ensures that all Americans can communicate by requiring accessible modes of communication, among many other requirements for the common good. In other cases, the failure of the marketplace results from unique industry characteristics, such as scarcity of the public spectrum resource which requires the FCC to determine and define appropriate spectrum usage and allocation.[1] The enforcement agency model does not lend itself to effective rectification of such market failure.

[1] Within the communications industry it is frequently mentioned that the precursor of the modern FCC was established when the importance of regulating the use of radio airwaves became painfully evident as a result of the Titanic tragedy.

Second, the Commission often implements a forward-looking policy by shaping or incubating new or nascent markets. Assigning multiple Commercial Mobile Radio Service ("CMRS") licenses per geographic market[2] and developing rules for spectrum allocation and auctions[3] are examples of forward-looking policy making that produced dynamic economic results. Indeed, Congress has expressly assigned to the FCC the forward-looking responsibility of actively encouraging the provision of new technologies and services to the public.[4]

Third, the Commission gathers data and periodically assesses the state of competition in critical communications sectors, among other things, thereby facilitating effective oversight of the U.S. communications industry. Indeed, in framing its macro policy questions, the white paper itself cites to and relies on data collected and reported by the FCC.

Thus, although this particular white paper limits its focus to competition policy, broader legislative action concerning the FCC's role should be informed by the multi-faceted nature of the agency's longstanding responsibilities.

Competition Policymakers Should Identify and Eliminate or Regulate Sources of Market Distortion

Turning to the framework for competition policy in the future, the white paper correctly identifies the phenomenon of similar services being delivered over a variety of distribution media: voice can be delivered via terrestrial mobile, satellite, copper, coaxial, or fiber networks and Americans can watch video programming on computers via broadband Internet connections, on televisions using over-the-air broadcasts, or on-demand using their cable set top boxes on a coax network. Innovative voice, text, and video services have developed and

[2] In 1981, for example, the Commission decided to award two, rather than one, cellular licenses per geographic area in order to promote facilities-based competition. *See An Inquiry Into the Use of the Bands 825-845 MHz and 870-890 MHz for Cellular Communications Systems; and Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, Report and Order, 86 FCC 2d 469, ¶ 15 (1981).

[3] *See* 47 U.S.C. § 309(j)(3)(A) (Congress requiring the FCC, in designing spectrum auction rules, to promote "the development and rapid deployment of new technologies, products, and services for the benefit of the public").

[4] *See* 47 U.S.C. § 157 (making it "the policy of the United States to encourage the provision of new technologies and services to the public" and directing the Commission to complete public interest determinations on petitions relating to such new technologies and service within 12 months); *see also* 47 U.S.C. § 1302(a) ("The Commission . . . shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience, and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment.").

grown notwithstanding the FCC's authority to regulate some of those services and providers which, in some circumstances, it has exercised.

The presence of voice, text and video services that compete with one another on different distribution platforms should not be mistaken for industry-wide competition obviating the need for oversight. Today's marketplace is one of interdependent services, providers and networks. The existence of competition in one part of this ecosystem does not translate into competition across all critical parts of the ecosystem. For example, from the cloud to the consumer, Microsoft offers an array of consumer and enterprise services, devices, software, and cloud capabilities – all of which compete with offerings from numerous other providers. The fulsome and effective use of almost all of these innovative offerings, however, relies on customers having access to underlying transmission connectivity which many voice, text, and video providers do not offer. This interdependency of the Internet ecosystem requires careful consideration of all component parts of the marketplace.

Effective competition policy making requires precision in identifying where enduring entry barriers exist. For example, identifying multi-platform competition at a service layer doesn't tell us whether there are barriers to entry at the network level that may harm the service-layer competition. Accordingly, the industry expertise of an expert agency is critical for purposes of identifying competitive distortions and evaluating how best to address them.

Regulation Through *A Priori* Rules Is Appropriate for an Economic Sector with Enduring Entry Barriers and Rapid Innovation

Sometimes it is not reasonable to rely solely on competition to discipline market actors. The white paper implicitly assumes an inexorable march toward competition notwithstanding the continued presence of durable entry barriers in some sectors. Where vibrant and effective competition is unlikely to be generated in the near term, the focus of competition policy should pivot, where appropriate, toward effective regulation of the non-competitive elements of the marketplace. Otherwise, the dominant firms could exert market power or leverage it into competitive markets, dampening dynamic innovation and harming consumers and competitors alike.[5] In the event that such circumstances are predictable and likely to endure – particularly in an economic sector characterized by technological interdependency that affects competitive dynamics as well as continual technological change – continual regulatory oversight with *a priori* rules is apt to be more efficient and effective than general guidance and sporadic enforcement action. In addition, where enforcement is the appropriate tool, it often will be more efficient – and substantively effective – for an expert agency rather than a generalist court to hear and decide highly technical enforcement actions. For the foregoing reasons, a regulatory structure for the communications industry that allows use of both *a priori* rules and *ex post* enforcement in conjunction with embedded subject matter expertise is preferred to the often slow, generalist, time- and resource-intensive and less effective enforcement-only model.

[5] For example, the Commission implemented telephone number portability and interconnection rules, among others, in order to facilitate telecommunications competition.

Employing *a priori* rules in regulatory oversight where competition or public interest policy dictates also can promote economic dynamism. Companies undertake considerable investment risk when developing a new product or entering a new line of business. Providing companies with firm guidance or advance knowledge of the "rules of the road" helps them to manage their risk in a way that promotes innovation. Further, the FCC has long used the waiver process to avoid imposing undue hardship or barriers to innovation that might otherwise result from rigid application of *a priori* rules.

Flexibility Is Important To Effective Oversight of a Rapidly Evolving Industry

The white paper asks for input on the appropriate regulatory construct that would remain flexible to address future change. Given the white paper's admirable focus on accommodating change, an equally important question may be to ask what should be the legislative approach used to reform communications laws. Federal communications laws historically have not been amended frequently – and certainly not at the pace of technological advancement.[6] The slow pace of legislative change is not inherently negative, but recognition of that pace should guide the approach that Congress adopts in reforming the Communications Act – because those reforms may be with us for a long time.

When drafting amendments to the Communications Act, Congress should refrain from micro-management or the need for the resource-intensive process of repeatedly revisiting a particular matter through periodic sunset and reauthorization. Instead, Congress should consider how, with a light touch, to let regulators be nimble and responsive to change. At the highest level, Congress should seek to avoid being prescriptive in defining what competition means because, as the white paper implicitly recognizes, the marketplace has changed and will continue to change. Legislation that establishes clear objectives for the Commission to implement while avoiding overly-prescriptive means for achieving those objectives would provide enduring direction with inherent flexibility. Such an approach would produce legislation more likely to remain relevant, applicable, and effective over time and with evolving circumstances without the need to revisit it frequently.

[6] It is not uncommon for major amendments to existing laws to take multiple Congresses to enact. In the communications industry, by the time the bill is signed into law, the technology or market structure that was assumed at – or originally motivated – the beginning of the legislative process may have changed significantly. For example, work on the legislation that became the Telecommunications Act of 1996 began in 1988 and the word "Internet" appears 11 times in the Act. As anecdotal evidence of the perception of the Internet at that time, 10 of those 11 references concern the then-new section of law called "Protection for private blocking and screening of offensive material."

Microsoft thanks the Committee for the opportunity to provide this response to the Committee's white paper, and looks forward to ongoing discussions concerning competition policy and the role of the FCC. For questions and additional information, please contact Paula Boyd, Director, Government and Regulatory Affairs at Paula.Boyd@microsoft.com or 202.263.5946 or John Sampson, Director Government Affairs at jsampson@microsoft.com or 202.263.5913.

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Washington, DC 20515

Re: Communications Act Update

Dear Representatives Upton and Walden,

With regard to Congress' update of the US Communications Act, I would like to share a professional and international perspective. I am a telecom competition attorney in Romania. Until October 2013 I was the Vice-President of the Romanian Competition Council and was involved in the cases and the debates surrounding the communications both in Romania and the European Union.

Communications law is global, and communications enterprises are also global. Legislation from the United States can have an impact in Europe, both positive and negative. Europe is still struggling to find its way and to fill the digital and technology divide that separates it from the United States and Japan/South Korea. There is an ongoing debates about an EU can achieve a digital single market, something already enjoyed in the US and how a legislative package can accelerate the integration of the EU members states market (a feature which is specific to the EU, with serious effects on development and innovation) and at the same time increase growth, productivity, and employment. We are caught up in many in a number of difficult digital economy topics such as roaming and net neutrality, which is dubiously purported to support consumers and innovation.

As you move through the update process, please keep in mind the following:

1. Both the U.S. and the E.U. need a "Digital Age" Communications Act. Laws typically reflect the era in which they are enacted but can quickly become outdated. Both communications and information technology industries evolve faster than regulation. Frequently regulation impedes innovation; this was the case of the government telephone monopolies in the XX-th century which impeded development in new communications technologies.

In particular the EU is suffering from legacy utilities style regulation which inhibits companies from investing in next generation access technologies for broadband. Generally the EU has relied on regulations that treat broadband as a public utility and enforce service-based competition, which requires that incumbent's lease their networks at regulated wholesale rates to competitors (also called unbundling). Meanwhile the US took a different approach relying on facilities-based competition where operates compete with different technologies and where entrants are expected to build their own networks.

Though the negative impact to Europe has been documented by a number of academics, a recent report using EU data by Christopher Yoo at the University of Pennsylvania puts the differences of EU and US policy in sharp relief. In the US, 82% of the population can get a next generation broadband technology of some kind (whether fiber to the home, cable DOCSIS3, very fast DSL, or 4G/LTE), but only 54% of the EU. You have to take into account also the fact that most people in Europe are literate and technology-savvy, so that there is demand for the modern technologies and the high speeds. The reason for Europe lagging behind are to be found rather in the huge volume of regulation, together with the fragmentation of the network alongside the borders of the member states of the European Union. In conjunction, these bring along large inefficiencies and make investment in the telecom infrastructure riskier than it should be, which, in its turn, scares off financing institutions, already wary and not prepared to take on such risks. As a result, the US outpaces the EU in broadband investment. In 2012 operators invested $562 per household in the U.S. vs. $244 per household in Europe. This trend has been ongoing since 2007.

2. Not only is it time to retire outdated classifications envisioned for obsolete networks, it is necessary to design a regulatory framework to be flexible for change. The ideal framework will also recognize and embrace the dynamism that comes from technology innovation. Essentially a limited role for government regulation has been shown to encourage investment and promote innovation. Such a framework should technology neutral and rely as much as possible on ex post competition law. The point of competition law is not to protect competitors, nor is it to give some parties preferential operating conditions. To create a level playing field, competition law should be standardized and applied equally across all players in the value chain. No authority should attempt to pick winners by singling out a technology, company, or business mode. Technologies should be allowed to compete across industries and no longer be confined to silos. As technological developments over the last decades have shown, the evolutions of the technology and the changes they bring to the paradigms of the economy risk transforming any good faith attempt to build a narrow road for future developments into a risk for the very existence of both the road (the networks) and, as a consequence, for the existence of the vehicles using the road (the content providers).

3. Citizens and consumer deserve a simple, consistent and transparent approach to communications and IT regulation. This is best achieved when the same rules should apply to all providers in the marketplace. The people are also served by general competition agencies and consumer authorities, rather than sector specific regulators that are subject to capture both by industry and special interest.

Markets are resilient at solving problems and meeting consumer needs. As such, government intervention should be invoked only when needed and where there is a clearly demonstrated harm to consumers or competition.

With its leadership to modernize its laws, the US will be an important example for Europe and other regions. The US has the opportunity to demonstrate that a modernized Communications Act supports dynamic competition, innovation, and consumer protection.

As the late president Ronald Reagan said: ”The nine most terrifying words in the English language are, 'I'm from the government and I'm here to help”. I hope it is not the case for the new US Communications Act!

Yours sincerely,

Valentin Mircea

Telecoms and Competition Lawyer

June 13, 2014

Via Electronic mail (CommActUpdate@mail.house.gov)

Committee on Energy and Commerce
House of Representatives
United States Congress
2125 Rayburn House Office Building
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Re: Mobile Future Comments on Competition Policy and the Role of the FCC

Dear Members of the Committee on Energy and Commerce:

America's wireless consumers benefit from one of the most vibrantly competitive and innovative sectors in our nation's economy. In response to a long-standing and bipartisan regulatory approach marked by restraint, communications providers have made historic levels of capital investments in U.S. broadband infrastructure – both wired and wireless – leading to spectacular growth and new economic opportunities. The wireless sector in particular has been transforming entire industries, creating a thriving new "app economy," and equipping consumers with new tools to more effectively address an expanding variety of social, educational, health, and other issues facing our communities and families.

Against the backdrop of this vigorous competition in the mobile ecosystem, the Committee's White Paper on competition policy provides a timely and appropriate vehicle for considering a regulatory framework that enables and sustains continued U.S. leadership in wireless.[1] Mobile Future appreciates the opportunity to comment on how competition policy should be viewed in light of the "rise of mobility and wireless communications as both a complement and a substitute to traditional communications tools."[2]

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[1] House Energy and Commerce Committee White Paper, Competition Policy and the Role of the Federal Communications Commission (May 19, 2014), http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/20140519WhitePaper-Competition.pdf

[2] Id. at 1.

Competition Policy Should be Centered on Consumer Experiences, Reflect the Current Competitive Landscape and Promote Innovation and Investment.

The Consumer Experience Must be a Critical Component of Competition Policy.

Any analysis of competition in the communications industry must focus on the consumer experience. Throughout the sector, consumers benefit from many choices for voice, video and broadband services. Specifically in the wireless space, mobile innovators compete vigorously across price points, devices, applications, and services, resulting in increased wireless broadband demand and greater consumer satisfaction. Evidence of the wireless sector's competitive dynamism abounds.

Wireless data prices continue to drop as technology evolves and the cost of providing data decreases.[3] In 2013, tablets outsold desktops and laptops[4] and by the end of that year consumers could choose among 790 wireless devices from more than 50 manufacturers.[5] By October 2012, nine out of ten Americans had at least three mobile broadband providers competing for their business.[6] The two leading app stores each now have over 1.2 million apps,[7] and consumers can choose from nearly 70 other app stores as well.[8] Mobile operators accounted for 48 percent of the $1.9 Billion mHealth market in 2012, with a focus on monitoring services.[9] Mobile app usage more than doubled in the past year alone.[10] Twenty-one companies across the country now offer 4G/LTE service, and last year, U.S. mobile subscribers nearly doubled their wireless data usage, consuming an average 1.2 GBs/month.[11]

This competition drives a highly dynamic marketplace focused on meeting consumers' needs, as evidenced by strong consumer satisfaction with mobile services and devices across all demographics. Last year, ninety-one percent of wireless consumers were "highly satisfied with

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[3] Analysys Mason, Bring Down the Cost of Mobile Data Traffic: Investing in New Technologies and More Spectrum (Nov. 6, 2013), http://www.analysysmason.com/About-Us/News/Newsletter/Mobile-data-cost-Nov2013/; Gerry Purdy, Wireless Operator Pricing: From Voice Minutes to Data Volume to Application Support (Feb. 20, 2014), http://blog.compassintelligence.com/post/2014/02/20/Wireless-Operator-Pricing-From-Voice-Minutes-to-Data-Volume-to-Application-Support.aspx.

[4] Matt Hamblen, Tablet Shipments Will Surpass Desktops and Laptops in Q4, ComputerWorld (Sept. 11, 2013), http://www.computerworld.com/s/article/9242344/Tablet_shipments_will_surpass_desktops_and_laptops_in_Q4.

[5] Written Ex Parte of CTIA, GN Docket No. 09-51, WT Docket No. 13-135, at 3 (filed Nov. 13, 2013).

[6] Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, *Sixteenth Report*, 28 FCC Rcd 3700, 3749 ¶ 48 (2013).

[7] *See,* Sarah Perez, iTunes App Store Now Has 1.2 Million Apps, Has Seen 75 Billion Downloads to Date, TechCrunch (Jun. 2, 2014), http://techcrunch.com/2014/06/02/itunes-app-store-now-has-1-2-million-apps-has-seen-75-billion-downloads-to-date/ and AppBrain Stats, Number of Android Applications (Jun. 11, 2014), http://www.appbrain.com/stats/number-of-android-apps.

[8] mobiThinking, Global Mobile Statistics 2013 Section E: Mobile apps, app stores, pricing, and failure rates (May 2013), http://mobithinking.com/mobile-marketing-tools/latest-mobile-stats/e#toomanyappstores.

[9] CTIA, Global mHealth Reaches 1.9 Billion (Mar. 24, 2014), http://www.ctia.org/resource-library/facts-and-infographics/archive/operators-mhealth-market.

[10] Zoe Fox, Mobile-App Use Increased 115% In 2013, Mashable (Jan. 14, 2014), http://mashable.com/2014/01/14/mobile-app-use-2013/?utm_cid=mash-com-fb-main-link.

[11] Brian X. Chen, U.S. Mobile Internet Traffic Nearly Doubled This Year, N.Y. Times (Dec. 23, 2013), http://bits.blogs.nytimes.com/2013/12/23/u-s-mobile-internet-traffic-nearly-doubled-this-year/?_r=0.

their wireless phone service,"[12] and "[c]ustomer satisfaction with cell phones is up for a second straight year, rising … to a new all-time high."[13] This satisfaction comes from a positive wireless experience as consumers benefit from competition across all vectors of our rapidly evolving wireless ecosystem. Competition policy should reflect this consumer experience.

Competition Policy Must Recognize New and Additional Sources of Competition.

Competition policy must be flexible enough to recognize new and additional sources of competition, including over-the-top (OTT) applications. The communications marketplace is dynamic, as reflected in the increased availability of products from a variety of sources, including non-traditional providers, which compete for consumers in the provision of voice, data and video services. Today's Internet marketplace reflects competition among and between platforms (*e.g.,* cable, wireless, telco, and satellite) and services (*e.g.,* VoIP, OTT applications, and content). These additional sources of competition bring market forces to bear on voice, data and video service providers and should thus be factored into any analysis of competition in the wireless marketplace. As competition continues to flow and increase from multiple platforms and services, the FCC's, DOJ's and FTC's role in assessing and regulating competition should correspondingly diminish, absent clear evidence of market failure.

Competition Policy Should Foster Widespread Investment and Innovation.

The wireless sector is an engine of U.S. economic growth, and the trend toward mobility will only continue. The mobile community is responsible for 3.8 million jobs, directly or indirectly, accounting for 2.6 percent of all U.S. employment.[14] The percentage of all web page views from mobile devices increased from 11 percent to 19 percent in the last year alone.[15] Since 2010, global shipments of televisions and PCs have stagnated, while shipments of untethered devices, such as smartphones and tablets, have skyrocketed.[16] As of last month, global mobile traffic represented 25 percent of the total Internet traffic, up from just 0.9 percent a mere five years ago.[17] From deploying more efficient technologies – such as LTE and LTE-Advanced – and infrastructure investments like small cells and refarming efforts, wireless carriers are pursuing all options in the quest for additional mobile capacity.

But meeting this growing consumer demand for mobility comes with high fixed costs – costs that our competition policies must acknowledge. Service providers spend billions of

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[12] Press Release, J.D. Power & Associates, 2013 U.S. Wireless Smartphone Satisfaction Study – Volume 1 and 2013 U.S. Wireless Traditional Mobile Phone Satisfaction Study – Volume 1 (March 21, 2013), http://www.jdpower.com/content/press-release/5TAb5Uk/2013-u-s-wireless-smartphone-satisfaction-study-volume-1-and-2013-u-s-wireless-traditional-mobile-phone-satisfaction-study-volume-1.htm.

[13] American Customer Satisfaction Index, Press Release, Subscription TV and ISPs Plummet, Cell Phone Satisfaction Climbs (May 20, 2014), http://www.theacsi.org/news-and-resources/press-releases/press-2014/press-release-telecommunications-and-information-2014.

[14] Roger Entner, Recon Analytics, LLC, *The Wireless Industry: The Essential Engine of U.S. Economic Growth*, at 1, 4 (Apr. 30, 2012), *available at* http://reconanalytics.com/wp-content/uploads/2012/04/Wireless-The-Ubiquitous-Engine-by-Recon-Analytics-1.pdf.

[15] Mary Meeker, Kleiner, Perkins, Caufield, Byers, Internet Trends 2014 – Code Conference, (May 28, 2014), http://s3.amazonaws.com/kpcbweb/files/85/Internet_Trends_2014_vFINAL_-_05_28_14-_PDF.pdf?1401286773.

[16] *Id.* at 95.

[17] Id. at 159.

dollars in capital investment to acquire spectrum and to deploy wireless facilities and services. For example, wireless providers spent nearly $20 billion in the FCC's 2008 700 MHz auction,[18] and are expected to spend billions more in the AWS-3 auction scheduled for later this year and the anticipated broadcast incentive auction in 2015. In 2013, U.S. wireless carriers invested $34 billion, or $104 per subscriber, in their networks, which is four times more per subscriber than the global average of $26 per subscriber.[19]

This investment can be deterred by the uncertainty and barriers created by an overly burdensome regulatory environment. Policymakers should continue to follow the light-touch approach that has enabled the tremendous growth and investment that have characterized the wireless industry.

Our policies also must facilitate access to spectrum – the crucial component to wireless growth and innovation. First, spectrum resources must be made available consistently to all competitors that have the desire and ability to put that spectrum to use – the FCC's policies should defend competition, not particular competitors. Second, the FCC should employ a nimble approach to licensing and secondary market transactions to expedite getting spectrum to those who will use it to serve consumers. Third, policymakers should continue efforts to repurpose underused Federal spectrum for non-Federal use, creating an additional stream of spectrum. To that end, policymakers must create incentives to encourage efficient Federal spectrum use and to enable repurposing of underused Federal spectrum for exclusive commercial use to serve consumers. Finally, spectrum should be allocated for both licensed and unlicensed (in higher frequency bands) use, as these are invaluable complementary tools to address spectrum demands.

In sum, our nation's competition policy should be guided by a restrained regulatory approach in which consumers are highly satisfied and where competition continues to abound from additional providers and platforms. Where competitive forces are working effectively to bring the benefits of competition to consumers, regulation should be used sparingly and only to address specific instances of market failure.

Congress Must Periodically Review and Revise the Communications Laws to Keep Pace with Rapidly Developing Technology.

The communications industry is constantly and rapidly evolving, making it challenging, to draft a governing statute that can address changing circumstances for years and decades to come. Since the last major update of the Communications Act in 1996, local telephone operators have transitioned into the long distance and video industries, cable operators now offer voice service, Direct Broadcast Satellite providers and OTT video also have emerged as substantial competitors to traditional Multichannel Video Programming Distributors like cable companies, wireless providers are providing voice, text, data and video services to a continually growing universe of consumers, and choices among wireless providers, plans and devices have grown exponentially.

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[18] *Auction of 700 MHz Band Licenses Closes*, Public Notice, DA 08-595 (rel. Mar. 20, 2008), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-08-595A1.pdf.

[19] CTIA, US Invests Four Times More in Networks (Mar. 13, 2014), http://www.ctia.org/resource-library/facts-and-infographics/archive/us-investment-networks.

These developments could hardly have been foreseen, let alone fully addressed, by any detailed statutory framework. Periodic review and evaluation of the effectiveness of statutory provisions is necessary to allow the law to evolve and meaningfully adapt to changing market and technological realties over time.

The Department of Justice and Federal Trade Commission Are the Expert Agencies on Competition Policy across the Economy and the Communications Industry Should Not be Singled Out for Disparate Treatment.

The DoJ and the FTC are the expert agencies tasked with enforcing the country's competition laws and policies across the entire economy. These agencies possess authority granted by the Sherman Act, the Clayton Act, the Federal Trade Commission Act and the Hart-Scott-Rodino Act to protect competition in the communications and other industries. Further, their expertise and standards of review, and the full body of case law developed under their enabling statutes – including numerous Supreme Court cases – bring predictability to competition policy. Separately, the FCC holds authority under the Communications Act to consider whether proposed transactions would serve the public interest, convenience and necessity, a standard that includes a competitive analysis. By singling out the communications sector to special – and more stringent – review at times, the FCC's competition policy may drive investment to other sectors of the economy or to other parts of the globe. Policymakers should avoid those types of industry-specific burdens that could hamper investment and innovation in such a vibrant sector of the economy.

Conclusion.

As the Committee considers U.S. competition policy, policymakers should focus on consumer experiences, ensure the competitive analysis framework is sufficiently dynamic to reflect new sources of competition, and promote innovation and investment. Congress should continue periodically to review the communications laws to effectively keep pace with competitive and technological developments. Further, the communications industry should not be subjected to unique and sometimes more burdensome competition policies that could divert investment and thwart innovation. Mobile Future stands ready to provide the Committee with additional feedback as it considers these important issues.

Respectfully submitted,

/s/ Jonathan Spalter
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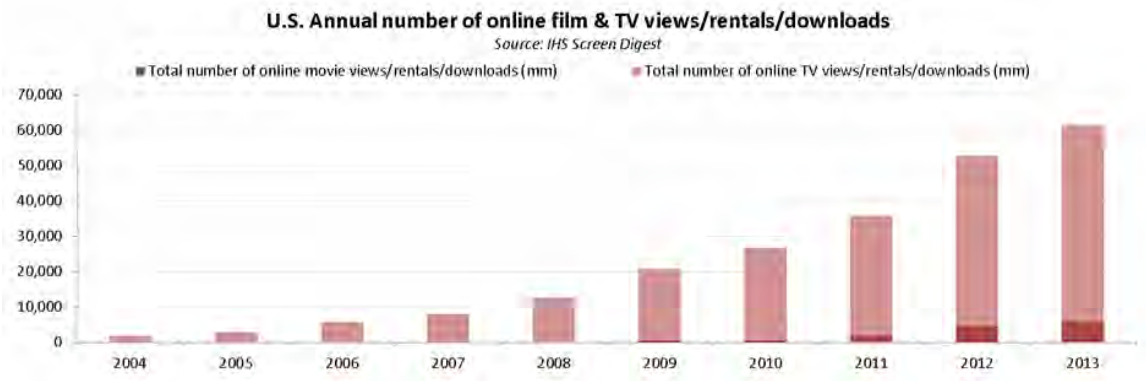
Comments of the Motion Picture Association of America
in Response to the May 19, 2014, #CommActUpdate White Paper
on Competition Policy and the Role of the Federal Communications Commission

June 13, 2014

If there is any communications sector in which policymakers can continue to rely on market forces, it is the video programming sector. Massive investment, rampant innovation, and growing competition demonstrate the merits of avoiding unnecessary government intervention. When First Amendment values are added to the mix, there is no justification for expanding regulation of the television content business—online or off.

As the advocate for the American film, television, and home video industries, the Motion Picture Association of America is pleased to respond to the House Energy and Commerce Committee's May 19, 2014, solicitation for comment in its #CommActUpdate white paper on "Competition Policy and the Role of the Federal Communications Commission." Our six members—Walt Disney Studios Motion Pictures, Paramount Pictures, Sony Pictures Entertainment, Twentieth Century Fox, Universal City Studios, and Warner Bros. Entertainment—are some of the leading providers of television and film content and are committed to providing audiences with as many choices as possible for experiencing great news and entertainment.

And choices they have. Where once Americans' sole source of television programming was three broadcast channels via a television set, today viewers can access hundreds of channels over a variety of distribution sources—and increasingly they may access that content on many devices other than a television. Indeed, online distribution is growing at an accelerating pace. In 2009, more than 50 legitimate online services in the United States were already providing access to movies and television shows. Using those services, U.S. consumers accessed 376 million movies and 20 billion television shows that year. By 2013, the number of legitimate services had jumped to more than a hundred[1] and the numbers of movies and television shows they accessed rose to 5.7 billion and 56 billion. The following chart shows the remarkable pace at which audiences are embracing online video.



[1] See www.WhereToWatch.org.

The quality, quantity, and diversity of video programming available to audiences today is simply staggering. In this new Golden Age of Television, Americans can choose from a dazzling and constantly evolving array of comedy, drama, sports, news, documentaries, films, educational, and informational content. Fans can enjoy the skill and artistry of the best writers, directors, actors and journalists. And as the digital revolution multiplies exponentially the ways in which we can spend our precious free time, the ensuing "competition for eyeballs" has drawn the video marketplace into a virtuous race to the top, yielding increasingly sophisticated and compelling video content—programming with which Americans love to engage and which spurs us to engage with each other.

The white paper asks how Congress should define competition in the modern communications marketplace. When measuring competition in the video marketplace, policymakers should look at the total number of existing choices consumers have, as well as the extent to which technology enables new ones to arise if current options are not meeting consumer expectations. Even the *threat* of competition can be a significant market force. YouTube and Vimeo, for example, are sources of both actual and potential content with low barriers to entry, such that professional and amateur producers have the opportunity to access vast audiences with relative ease. Policymakers must also refrain from defining competition too narrowly. An overly restrictive program market definition, for example, can lead to an unreasonably constrained "market of one" by ignoring other programming that vies for viewers' attention.

The white paper asks what principles should form the basis of competition policy in the oversight of the modern communications ecosystem. We point to the comments we filed in response to the Jan. 8, 2014, white paper on "Modernizing the Communications Act." There we suggested three principles to consider when addressing the video marketplace:

1. Government should not act absent evidence of market failure.

2. Before taking action, government should determine whether the costs will outweigh the benefits.

3. Creators, distributors, and consumers can themselves enter into relationships in the competitive video marketplace that capitalize on technology to make content accessible in innovative ways so long as a framework exists for the effective enforcement of intellectual property rights.

The white paper asks what role, if any, should the Commission have to regulate edge providers. It is unclear whether "edge provider" is meant to include video content creators, but we see no justification for Congress to direct the FCC to expand regulation of programming networks. First, as discussed above, there is no market failure warranting intervention in the video programming marketplace; to the contrary, competition is robust. Expanding involvement by the Commission will more likely reduce choice and hinder innovation than benefit consumers or competition policy. Second, free speech

values further counsel against expanding regulation of video programming providers. Even in the broadcast distribution arena, where the level of First Amendment protection has historically been more modest, the Communications Act explicitly states that "no regulation or condition shall be promulgated or fixed by the Commission which shall interfere with the right of free speech by means of radio communication."[2] And in the cable distribution context, where First Amendment protection is stronger, the Act states that federal agencies "may not impose requirements regarding the provision or content of cable services, except as expressly provided in [the cable] title."[3] Supreme Court precedent indicates that content regulation on the Internet would be subject to even more rigorous scrutiny.[4] Therefore, neither Congress nor the FCC should regulate content providers above or beyond where currently provided for in the Act, and there is no basis for amending the Act to expand that authority.

Conclusion

Experimentation and disruption are key drivers of innovation; government interference in a programming marketplace characterized by high investment and rapidly evolving technology will only reduce choices for consumers in the long run. Allowing rampant competition and consumers themselves to dictate winners and losers in that marketplace will not only better respect fundamental First Amendment values, but be far more efficient, to the ultimate benefit of both content creators and the audiences that love to watch that content.

Respectfully submitted:

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[2] 47 U.S.C. § 326.
[3] 47 U.S.C. § 544.
[4] *See, e.g., Reno v. American Civil Liberties Union,* 521 U.S. 844 (1997).

台揚企業集團
MTI Group

Representatives Greg Walden and Fred Upton
House of Representatives
Congress of the United States of America
Washington, DC

June 12, 2014

Re: Communications Act Update, request for public comment

Dear Congressmen Walden and Upton:

My name is Aleksandra Chećko. I am an Industrial PhD student at MTI Radiocomp and Technical University of Denmark (DTU). I have a MSc degree in telecommunications from Technical University of Denmark and Technical University of Lodz, Poland. My PhD project contributes to a novel mobile network architecture that has the potential to lower cost of network operation whilst improving quality of service for end users.

Mobile data traffic is growing, and it is growing exponentially [Cisco, Ericsson]. So are the costs of mobile network operators to support such needs [Juniper Research]. At the same time, are users willing to pay more for their mobile data plans? Not really. Actually they would prefer to pay less—and they would like more data for the same or lesser price. In 2011 Juniper Research forecasted that mobile infrastructure costs are growing but mobile revenues are flat if not decreasing. As such, mobile operators need creative solutions to continue to deploy infrastructure without increasing costs.

A Cloud Radio Access Network (C-RAN) is a smart mobile network architecture that leverages cloud solutions for sharing a part of a base station between many cells. Centralized processing offers a way to increase quality of service without increasing cost. Taking advantage of multiplexing gains, fewer base station units are needed to cover a given coverage area, lowering operating expenditure (OPEX) and capital expenditure (CAPEX). However, this is done at the cost of increased data rates on links between parts of a base station, now spanning over tens of kilometers.

My project focuses on optimizing aforementioned communication links. Moreover, I work on defining deployment scenarios for which C-RAN is beneficial.

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MTI Radiocomp is a part of MTI Mobile, which is a global business unit of MTI Microelectronics Technology, Inc. MTI Mobile designs and delivers customized radio solutions, power amplifiers, and IP core interfacing solutions for leading providers of mobile broadband networks. We develop state-of-the-art, high-quality radio network products from engineering blueprint through to product maturity and volume delivery. MTI Radiocomp has incessantly achieved a high degree of technology innovation via close relationships with universities in research projects and a number of industrial PhD programs. Those projects were co-founded by The European Union, Danish National Advanced Technology Foundation as well as Danish Ministry of Science, Innovation and Technology.

In the operating environment, it's important that innovators can take risks to experiment and innovate with different technologies and business models. If we want to get more data and higher speeds without increasing costs, we need to make networks smarter. Companies need freedom to test and verify ideas in the marketplace. This is also facilitated by collaboration with universities.

It is important that the Communications Act Update process recognize that today's mobile platforms enable increasing data and functionality because communications, media, and IT are converging. Whereas mobile networks only delivered voice and text before, they now deliver video in increasing quality. Therefore the laws that govern these networks need to updated for a modern reality, and silos of the past need to be retired.

Sincerely,

Aleksandra Chećko
Industrial PhD Student

MTI Radiocomp ApS
An MTI Company

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June 13, 2014

RE: NAB Response to the House Committee on Energy & Commerce White Paper on Competition Policy

NAB responds to the Committee's May 19, 2014 posting of a white paper focusing on competition policy and the role of the Federal Communications Commission (FCC). NAB shared its views in January with the Committee concerning the state of current communications law and discussed what is working and what needs reform. We are pleased to submit this response to discuss some of the issues raised in the May 19 white paper.

The flurry of recent merger announcements in the various segments of the communications industry highlights the need for Congress to be tightly focused on the state of competition in the market and how smart policies can promote competitiveness. The communications markets are clearly consolidating, but equally important, these markets increasingly overlap. Not only are telephone companies delivering packages of video, and cable companies rolling out millions of Wi-Fi hotspots to offer consumers broadband connectivity, but wireless carriers and other broadband providers are increasingly the source for video content for consumers both inside and outside the home. However, the rules governing these various platforms differ dramatically, and those differences discourage competition and inhibit investment and innovation.

As the Committee considers this evolving picture, we urge you to keep these points in mind:

Broadcasting can help to ensure there is true intermodal competition.
Broadcasting was the original "wireless service" and today television and radio broadcasters serve hundreds of millions of Americans every week with high quality news, sports, and entertainment. The broadcast platform thus should be seen as a competing platform with other forms of content distribution. Today, consumers can access video content from a broadcast platform, or from a cable system, DBS provider, or via wireless broadband. We have reached the point where it is appropriate to conceive of each platform -- broadcast, cable, DBS, wireless -- as a distribution source for multiple channels of programming. Interestingly, while each of those other platforms has a potential choke point where the platform owner could decide to not offer certain

content, in the broadcast platform the consumer always rules and can access all over-the-air content with no toll gate.

Broadcasting can play a market-disciplining role vis-à-vis the pay-TV industries. As Congress watches the traditional cable and MVPD market go through substantial consolidation, some consumer groups have raised concerns that this consolidation will increase the ability of MVPDs to charge ever-higher prices for their services. Americans are very concerned about the cost of their cable and satellite packages. That is one of the reasons that the so-called "cord cutters" and "cord nevers," those consumers who are turning away from MVPDs, have found a substitute for MVPD prices they either cannot afford or do not want to pay: a broadband connection to access Netflix or Hulu or Apple TV or Amazon Instant Video *plus* a broadcast connection (*i.e.*, digital antenna) to watch free current shows and live news, sports and entertainment events. With the transition from analog to digital television, consumers can now get – for free – more channels than ever easily with an antenna. Antenna manufacturers have seen their product fly off the shelves of big box stores, and we are watching a significant uptick in over-the-air television viewing, now 19.3 percent of all television households, translating to 59.7 million viewers, according to GfK Research, are exclusively watching television with an antenna. And this number is rising every year. In this way, free broadcasting coupled with over-the-top providers serve as a significant market check against the pricing power enjoyed by MVPDs. Similarly, consumer prices for satellite and Internet radio services have been checked by the provision of free over-the-air radio services. NAB encourages policymakers to adopt policies that encourage this pro-competitive role.

Broadcasters' ability to play these two vital roles -- intermodal competitor and market-disciplining check -- is constrained by rules written when broadcasters were the only wireless service. The current broadcast ownership rules are simply out of touch with the reality of today's media marketplace. These ownership rules distort competition and limit broadcasters' ability to respond to market forces. Meanwhile, cable, satellite and Internet-based media outlets – which operate without these cumbersome regulations – continue to proliferate and attract both audience share and advertising revenues. The local broadcast television rule, for example, which generally prohibits the ownership of two television stations in the same market, assumes that television broadcasters only compete against other television broadcasters. That notion is completely divorced from the current reality. One only need look at the growing cable practice of selling local advertising across hundreds of cable programs to understand that there is direct and real competition between broadcast and cable channels. Indeed, the largest cable operators have joined forces with satellite companies and with AT&T and Verizon to create a single interconnected platform for joint local TV advertising sales. Yet in spite of this evidence, the FCC is perpetually stuck in the past and even just recently decided to effectively prohibit two broadcast TV stations from engaging in the same kind of joint sale of advertising as MVPDs do every day.

Local radio stations face similar regulatory obligations that their direct competitors do not. While Sirius-XM can offer hundreds of channels that are sent to local communities across the country and there are no limits on Internet radio providers,

a local broadcast radio station owner is saddled with a complicated sliding scale of ownership restrictions depending on market size. And while a small market broadcast TV or radio station has a presumption that a combination with a local newspaper outlet is not in the public interest, the law has no problem with Amazon's CEO Jeff Bezos purchasing the Washington Post. In this world of intense competition, broadcasters have difficulty competing in a marketplace so skewed by disparate regulation.

Congress has a duty to ensure that all competitors can fairly compete. As the Committee considers how to promote competition across and among sectors in the communications industry, we urge the Committee to pursue parity of regulation. For many years there has been a bipartisan consensus that FCC policies generally should be "technology neutral." It is long past time to adopt that sound and sensible policy guideline to the FCC's ownership rules, political disclosure and advertising practices. It is sometimes noted that broadcasters received their spectrum for free and so they need to serve the public interest. This misleading argument ignores the fact that (1) that 92% of television broadcasters purchased their stations in the open market, investing over $50 billion in those stations and their spectrum; and (2) wireless, cable and satellite have all received "free" spectrum, yet have no public interest obligations.

Broadcasters live up to their public service obligations every day by covering local weather emergencies, providing important news about community events, and delivering the most-watched and listened to entertainment and sports programming in all the videosphere. Broadcasters urge these changes in policies not because they question their public interest obligations, but to provide them with the ability to better compete and continue to provide the services and information that local communities expect from their local television and radio broadcasters. Congress should encourage this investment by the broadcast industry so it can serve as a vital competitive platform where consumers can access content for free and serve as a counterweight to the pay-TV business model.

* * *

We commend the Committee for undertaking this review of communications laws through the prism of competition *as it currently exists today*. The Commission's ownership rules must keep pace with market changes. Plainly, rules written in 1975 have not kept pace with changes in the television, radio or newspaper industry, let alone changes in the wireless industry (not yet invented), Internet (not yet invented), satellite TV (not yet invented), satellite radio (not yet invented), nor the broadband industry (not yet invented). We urge the Committee to base its analysis on real evidence, not unsupported opinion and speculation. Conjecture cannot be a substitute for facts; sentiment cannot supplant reason.

Broadcasters have responded to new competition by seeking out efficiencies that will lead to better service. Shared services and joint operations have led to more local news, more foreign language television and other tangible community benefits. We urge the Committee to look beyond the rhetoric and keep its eyes focused on how current broadcast ownership rules have stifled investment and opportunity in broadcasting. In this time of intense consolidation in the communications industry, these ownership rules

are increasingly outdated and have significantly harmful consequences on local media. The decline of daily newspapers is undeniable. Regulatory policies that starve local media of capital investment are a proven failure. They serve no one – not current broadcasters, not interested new entrants, and most importantly, not the American people.

In sum, NAB urges you to examine our communications laws and the FCC's rules to promote fair competition across a range of platforms. That is how the American consumer benefits.

N A R U C
National Association of Regulatory Utility Commissioners

June 13, 2014

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
2125 Rayburn HOB
Washington, D.C. 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
2322A Rayburn HOB
Washington, D.C. 20515

The Honorable Greg Walden
Chairman
Subcommittee on Communications,
Technology & the Internet
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The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications,
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Re: NARUC Comments to House Energy & Commerce Committee White Paper #3 - "Competition Policy and the Role of the Federal Communications Commission"

Dear Chairmen Upton, Walden and Ranking Members Waxman, Eshoo:

The National Association of Regulatory Utility Commissioners (NARUC) appreciates the House's thoughtful approach to reform of the federal telecommunications law. The association does not have specific positions that are relevant to all the questions posed in this white paper. Some of the questions raise overlapping issues. As a result some of our answers cover similar ground. NARUC has not taken positions on the issues raised by questions 6, 7, 8, and 10.

If you have questions about any of the responses, please do not hesitate to contact the undersigned or NARUC's Legislative Director for Telecommunications Brian O'Hara at 202.898.2205 or bohara@naruc.org or J. Bradford Ramsay, NARUC's General Counsel at 202.898.2207 or jramsay@naruc.org.

Respectfully submitted,

/s/ Chris Nelson

Chris Nelson
Chair, NARUC Committee on Communications
Vice Chairman, South Dakota Public Utilities Commission

House E&C Telecom Act Update Whitepaper #3 – Competition Policy and the Role of the Federal Communications Commission

Questions for Stakeholder Comment

1. How should Congress define competition in the modern communications marketplace? How can we ensure that this definition is flexible enough to accommodate this rapidly changing industry?

In testimony before this committee, NARUC has pointed out the importance of focusing on the right questions in any update of the federal telecommunications legislation.[1] *The reasons for regulatory oversight remain the same and do not change. One key, but certainly not the only, reason for policymakers to provide oversight is an insufficiently competitive market. The definition of competition in a given area is certainly a crucial consideration when deciding whether oversight is needed.*

NARUC does not have a specific position on the difficult question of how competition should be defined in terms of the relevant market's geographic scope or demographics. However, it is clear that the definition of the service used for defining the relevant market should be agnostic to the technology used to provide the service. No regulator or legislator should be intervening in the market to put a thumb on the scale to favor one technology over another. To the extent there are public interest requirements in terms of, e.g., reliability, resiliency, or emergency 911 communications, they should be applied without regard to the technology used to provide the service. The market should make those choices. While the 1996 Act has some deficits, the definitions sections do provide a functional approach to defined services. That is crucial. Congress should be very careful to constrain the FCC's ability to provide different treatment to functionally equivalent services.[2]

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[1] See, e.g., *Testimony by Commissioner John Burke, Chairman NARUC Committee on Telecommunications before the United States House of Representatives Energy and Commerce Committee Subcommittee on Communications and Technology hearing on "The Evolution of Wired Communications Network,"* (October 23, 2013), online at: http://www.naruc.org/Testimony/13%201022%20Burke%20Testimony2.pdf, at 3 ("[I]t is crucial for Congress, as well as state and federal regulators, to focus on the right issues.")

[2] Id., at 4, ("No regulator or legislator should be intervening in the market to put a thumb on the scale to favor one technology over another. The market should make those choices.") and at 7, ("Policy makers should, as Congress required, adopt a functional approach to defined services. The 1996 Act is far from a model of perfection. But in key areas, it does properly focus on services – not the technologies used to provide those services."). Since 1996, under successive administrations, the FCC has successfully and repeatedly usurped Congressional authority by interpreting the federal act in ways Congress could never have contemplated. The federal courts have acquiesced in these FCC determinations arguably providing license for the FCC to take actions the Commission deems prudent without seeking additional authority from Congress. See, e.g., *Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform – Mobility Fund*; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663 (2011), online at: http://transition.fcc.gov/Daily_Releases/Daily_Business/2012/db0206/FCC-11-161A1.pdf at ¶ 63 "Our authority to promote universal service in this context does not depend on whether interconnected VoIP services are

One way to assure the definition does not reflect differences that do not impact the competitiveness of the market is to examine the service provided by a particular provider (or using a particular technology) with respect to other services. If a substantial majority of business or residential users of that service in a specific area treats/views the services as directly substitutable (not as supplemental or adjunct services), then any definition of competition should also. It is also clear, that States are well positioned and possess the tools to evaluate competitive markets, however defined, located within their borders. States played a major role is opening local markets to competition before passage of the 1996 Act. Indeed, many of the competitive provisions of the 1996 legislation were derived from ongoing State initiatives to introduce competition in local service. As the very existence of the federal high cost program necessarily demonstrates, competition does not develop uniformly, but market by market. State commissions know the providers in their local markets, where they provide service and where they are investing, making them uniquely qualified to determine if sufficient competition exists. Any federal legislation should attempt to leverage that expertise.

2. What principles should form the basis of competition policy in the oversight of the modern communications ecosystem?

In 2012 NARUC's President convened a Task Force on Federalism and Telecommunications to update a 2005 whitepaper to respond to the changing communications landscape. NARUC's Task Force revised a set of core principles for oversight of the telecommunications sector to assist Congress, the FCC and States.

The FCC lacks the financial and personnel resources needed to singularly oversee telecommunications markets across a country the size of the United States. Moreover, the FCC is not positioned, nor does it have the same incentive, to acquire the same insight into local

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telecommunications services or information services under the Communications Act. Under **our** approach, federal support will not turn on whether interconnected VoIP services or the underlying broadband service falls within traditional regulatory classifications under the Communications Act." (emphasis added) Actually Congress was very specific in 47 USC §214 instructing that only *common carriers*, i.e., carriers that are providing "telecommunications services" (a traditional regulatory classification under the Telecommunications Act) can have access to federal USF funds so either broadband or VoIP services must fall within said "traditional" classification for funds to be provided. Even the recent 10th Circuit decision upholding the FCC's order on the merits acknowledges that fact. In one of the more poorly reasoned parts of the decision, after basically finding no problem with the notion that neither VOIP nor broadband services are necessarily "telecommunications services" aka "common carrier services", the court states: "Under the existing statutory framework, only "common carriers," defined as "any person engaged as a common carrier for hire . . . in interstate or foreign communication by wire or radio or in interstate or foreign radio transmission of energy," 47 U.S.C. § 153(10), are eligible to be designated as "eligible telecommunications carriers," 47 U.S.C. § 214(e). Thus, under the current statutory regime, only ETCs can receive USF funds that could be used for VoIP support." IN RE: FCC11-161 (rel May 23, 2014), mimeo at page 50, available online at: https://www.ca10.uscourts.gov/opinions/11/11-9900.pdf, The Court misses, or at least does not acknowledge, the fact that the Act also specifies that one is a "common carrier" under Title II "only to the extent one is providing "telecommunication services."

markets as NARUC's member commissions. Any federal framework should not take State "cops" off the beat or otherwise limit State's ability to protect both consumers and competition. Federal and State policymakers need to work together to ensure a competitive marketplace. What is needed is a common sense values-based approach. That's what NARUC advocates in our 2012 Cooperative Federalism and Telecom in the 21st Century report.

The NARUC Task Force recommends that all entities engaged in providing, regulating, or managing communications services, or proposing legislation for future oversight, use the following principles to guide their work. The Principles are provided in no specific order; each is equally important to ensure a robust and reliable communications ecosystem available to all consumers.

<u>Consumer protection</u> - Ensure that consumers are protected from unfair or illegal practices (including cyber threats) and that individual consumer privacy is maintained, regardless of technology.

- *States, the FCC, and industry should work collaboratively to ensure that consumers are protected from unfair practices regardless of the technology used to provide those services. It would make little sense for any federal legislation to limit any existing State avenues for consumer redress. This includes protecting against slamming, cramming, unfair billing practices, and cyber attack, as well as ensuring that consumers' personal information remains private and secure.*

- *By definition, even in a vibrantly competitive market, such abuses occur. Fraudulent operators are never deterred (and may actually benefit) from a robustly competitive market. But even mainstream players may find it difficult to root out bad practices if they enhance the bottom line. An obvious example arose during the heated and highly competitive long distance wars that took root in the 1990s. At that time, carriers like MCI, Sprint, and AT&T offered customers $10, $25 and $100 checks, along with competitive rates/packages to change toll service providers. At the same time, in a market teaming with both facilities-based and "reseller" competitors, slamming – or changing a customers' toll service without the customer's permission, became a big problem. There were carriers that engaged in outright fraud, and charged high rates, aided by the new market structure, but even established players offering competitive rates, received numerous fines for slamming.*

- *States and service providers should work together to track, review, and assist consumers in resolving complaints. By jointly reviewing and tracking complaints, all parties can identify and rectify problem areas.*

- *The FCC's customer data privacy standards should represent a floor–not a ceiling–for the protection of consumer privacy. Individual States, consumer protection agencies, and service providers should work together to determine whether additional protections are necessary based on their own needs.*

Network reliability and public safety - Reliable, ubiquitously available communications are critical to protecting the public safety, responding to disasters, and ensuring the public good. Communications policy must ensure that communications networks are reliable and available, regardless of technology.

- *States, the FCC, and service providers should work together to ensure that all consumers can access emergency services (i.e., 911, E911, and NG911) regardless of the technology used to carry calls.*

- *The FCC's outage reporting data provides a baseline for determining network reliability. This data should be shared with the States where allowed under applicable State laws so that the FCC and the States may work together to ensure that networks remain reliable.*

- *States and the FCC should work together to resolve call completion problems so that all consumers may make and receive calls to all locations across the country.*

- *States, the FCC, and industry should collaborate with broadband providers, electric utilities, and equipment manufacturers to address the issue of continuing voice service during major power outages.*

Competition - Competition is critical to discipline the market and to ensure that consumers have multiple options for selecting the service that best meets their needs. States are well positioned to work with all stakeholders to ensure that there is robust competition and customer choice across their specific jurisdictions.

- *Customers should have the choice of multiple providers, products, and services.*

- *States should work with industry and the FCC to determine where competition is adequate to ensure customer choice.*

- *The FCC, other federal agencies, and the States should work together, where statutorily permitted, to collect the granular data necessary to determine the areas where effective competition exists and to monitor changes to the competitive landscape.*

- *Where competition is not sufficient to ensure adequate and affordable service, when appropriate, the States and the FCC should consider further steps.*

Interconnection - Communications networks must remain interconnected on a non-discriminatory basis regardless of technology. All consumers must be able to call each other regardless of carrier or technology, calls must complete, and no area of the country should become an isolated communications island, simply because some providers choose not to interconnect to others in those locations. The requirement to interconnect should not be limited to a subset of providers, but should apply to all suppliers, regardless of the technology they use.

- *Interconnection is necessary to ensure ubiquitous service and enhance competition among providers.*

- *The States are well positioned to continue to oversee the interconnection process as provided in Sections 251 and 252 of the Telecommunications Act of 1996.*

- *Sections 251 and 252 of the Act are technology neutral. The rules for interconnection do not and should not depend on the technology used by the interconnecting providers.*

- *The States, the FCC, and industry should work together to examine the way the interconnection of next generation communications networks should be accomplished in order to ensure that all providers can complete calls to all other providers, regardless of the technology they use.*

Universal Service - Universal service remains a key policy goal of the nation as a whole. The States and the FCC should work together to ensure that service is affordable, ubiquitous, and reliable for all consumers.

- *The States retain an important role in working with the FCC to ensure that service providers continue to meet social policy goals, including the universal availability of communications services, providing reasonably comparable and affordable service between urban and rural areas, and providing access to services such as Lifeline, Telecommunications Relay Service, and carrier of last resort (COLR) obligations as permitted by State law, regardless of technology.*

- *The States and the FCC should continue to focus on the role set forth in Section 254 of the Telecommunications Act of working together to define and implement the requirements for universal service, regardless of technology.*

- *The FCC can best fulfill its responsibilities under Section 254 by working with the Federal-State Joint Board on Universal Service to determine the requirements for universal service, including funding and contribution mechanisms.*

- *The States are well positioned to work with the FCC to determine the effects of changes to the universal service funding methodology. Potential reforms of the federal USF contribution and support mechanisms should not negatively affect State USF funds or create the potential for causing gaps in the ubiquitous availability of service.*

- *The need for Universal Service Fund (USF) support will continue regardless of changes in technology. The States should retain a prominent role in all decisions related to USF.*

Regulatory diversity - Regulation should be functional rather than based on the specific technology used to initiate a communication and carry information. Regulation should be

technology neutral and developed after reviewing and evaluating constitutional and statutory State and federal roles and exploring multiple points of view.

- *The States remain important laboratories for exploring solutions to complex problems.*

- *Federal and State regulators should seek multiple points of view on issues, including utilizing the Joint Boards to ensure that State and end user needs are heard and understood.*

Evidence-based decision making - Open and transparent evidence-based decision making should be the primary tool in reforming regulatory policies. The best policies are developed by gathering information, evaluating all points of view, and exploring multiple options.

- *The States are ideally suited to conduct evidence-based proceedings.*

- *The FCC and the States should work together to collect the data necessary to make informed decisions.*

- *In order to ensure that all interested parties are given an adequate and meaningful opportunity to be heard, the FCC's informal rulemaking processes should be conducted openly and fairly and should rely primarily on timely written comments and not on ex parte communications.*

Broadband access, affordability, and adoption - The universal availability of broadband service is important to ensure job growth and the availability of quality medical care and education across the nation. The States have a key role in ensuring broadband deployment and adoption for their constituents, as well as in protecting the consumers of those services.

- *The States are well-positioned to work with the FCC, industry, and others to determine where broadband is needed and to assess the availability of competitive choices.*

- *The States should work with the FCC and industry to define consumer protections for broadband service, including exploring privacy issues, ensuring accurate billing, and working with industry to review and resolve customer complaints.*

- *The States are well-suited to work with the FCC and industry to track and evaluate the reliability of broadband service, including, where allowed under applicable State laws, reviewing outage reporting data and ensuring that service is restored on a timely basis..*

- *The States are well-positioned to work with the FCC, industry, and others to develop equitable and sustainable funding mechanisms for broadband service.*

3. How should intermodal competition factor into an analysis of competition in the communications market?

This question is a subset of Question 1. Our response to it tracks the discussion provided to respond to question 1. The technology used to provide a service cannot change the values we place upon our communications network. As noted, supra, that is why NARUC has for years consistently urged Congress and federal regulators to take a technology-neutral approach to regulation.[3] *The consumer does not distinguish whether the network provides the service using IP or TDM protocol to packetize the voice or data stream, fiber or copper, or, in some instances, wireline or wireless technology.*

The policy question should focus on if, in the defined market, the services compete directly and are considered as completely substitutable to a majority of business and residential consumers.

If the answer is yes, then "intermodal" competition is integral to an analysis of competition occurring within a particular (and properly defined re: size and demographics) market.

The technology used to provide the service is not generally a relevant consideration. Consumers care if the service works and that they are getting what they pay for. Though sometimes a specific technology can engender a new problem,[4] *the reasons State commissions and agencies like the FCC were created remain the same.*

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[3] *NARUC Legislative Task Force Report on Federalism and Telecom* (July 2005). See also, NARUC's February 2003, NARUC passed *Resolution Relating To Voice Over The Internet Telecommunications*, available online at: http://www.naruc.org/Resolutions/voice_over.pdf, that notes "a significant portion of the nation's total voice traffic could be transported on IP networks within a few years" and urged the FCC to "confirm its tentative decision that certain phone-to-phone calls over IP networks are *telecommunications services*." In November 2003, NARUC passed a *Resolution on "Information Services"*, at http://www.naruc.org/Resolutions/info_services.pdf, cautioning the FCC to consider the negative implications associated with a finding that IP-based services are subject to Title I jurisdiction, including the (i) uncertainty and reduced capital investment while the FCC's authority under Title I is tested; (ii) loss of consumer protections applicable to telecommunications services under Title II; (iii) disruption of traditional balance between federal and State jurisdictional cost separations; (iv) increased risk to public safety… content; (vi) loss of State and local authority over emergency dialing services…" Those warnings remain valid today. See also, NARUC's 2008 *Resolution Regarding the Interconnection of New Voice Telecommunications Services Networks*, online at: http://www.naruc.org/Resolutions/TC%20Interconnection.pdf. ("NARUC applauds the numerous advances in technology . . . to enable the efficient transmission of voice telecommunications traffic and the continued successes in developing innovative means to deliver voice telecommunications services . . . it is in the public interest for telecommunications carriers to interconnect their networks to exchange traffic in a technologically neutral manner, as provided for under Sections 251 and 252.") See also, NARUC's February 2012 *Resolution on Mandatory Reporting of Service Outages by Interconnected Voice over Internet Protocol Service Providers*, asking the FCC to, *inter alia*, extend the mandatory service outage reporting requirements in 47 C.F.R. Part 4 to interconnected VoIP service providers.

[4] Some argue some technology specific rules may be needed to address the reduced resiliency of wireless and fiber networks. But there is no question that competing services should face similar rules. Both rely more on commercial power both at the network level and at the customer premise. The battery backup system installed with FiOS service is the responsibility of the consumer, after one year. There is a similar question, given the increasing number of wireless-only households, of backup power to cell towers. NARUC has raised concerns about the problem and had a panel on the interdependencies between the telecom and energy sectors at our conference last November.

Oversight is required where competition is not vigorous enough to adequately protect consumers. Where competition is sufficient to ensure market choice and innovation, then there is a reduced (or possibly no) need for economic oversight. But the obligations to maintain other types of oversight remain. Mechanisms must be in place to protect consumers and maintain established public interest obligations. Regardless of the level of competition, some oversight is always necessary to provide things the market will not. This includes protecting consumers from fraudulent actors and poor service quality, imposing requirements to facilitate or enhance competitive forces, e.g., (i) requiring local number portability[5] and (ii) facilitating interconnection in markets with competing carriers with widely divergent market power, assuring disabled access, emergency calling services and universal service, and assuring a proper level of network reliability, as well as adequate plans that provide robust service restoration after disasters. By selectively applying these values only to specific technologies, policymakers distort the market and put their thumb on the scale in favor of one particular service. Policymakers should not choose winners and losers – the market should decide.

Moreover, whenever problems and abuse of customers arise—and they always do--the law of unintended consequences should NOT be construed to work against consumers. To assure needed State flexibility, federal rules should be "[a] floor, not a ceiling," as "…blanket preemption on consumer affairs will restrict consumer redress in the future." Moreover, "…consumers should NOT have to wait for federal rulemaking every time a new issue arises." In some cases, federal rules are necessary and appropriate. However, the federal government will always lack the manpower to help all consumers in every State. In many cases, whatever assistance they may provide will be complicated by distance and time zones. This means that even where federal minimum standards may be appropriate, State/local governments must be allowed to enforce the federal standards and adopt more specific standards where needed. Certainly, there is no rationale for Congress to limit its constituents' access to State remedies or penalties for federally defined inappropriate or abusive conduct.

4. **Some have suggested that the FCC be transitioned to an enforcement agency, along the lines of the operation of the Federal Trade Commission, rather than use broad rulemaking authority to set rules *a priori*. What role should the FCC play in competition policy?**

NARUC has not taken positions on the issues raised by this question. However, any such change, would if anything, increase the need for preservation of existing State mechanisms that protect business and residential consumers, ensure reliability, emergency communications, and service restoration, prevent disconnection in appropriate and defined circumstances, and maintain universal service.

[5] Number portability, which unquestionably facilitates competition, had to be forced on the wireless industry at a time when many considered that sector to be the poster child for a competitive market.

5. What, if any, are the implications of ongoing intermodal competition at the service level on the Commission's authority? Should the scope of the Commission's jurisdiction be changed as a result?

Congress should include provisions in any re-write to assure functionally equivalent services are treated/classified the same. Any rewrite should not permit the FCC to favor some entrants over others by refusing to classify a service for over a decade – as it has with VoIP services. The FCC's recalcitrance is not just inefficient. It has actively encouraged regulatory arbitrage and has required significant (and unnecessary) litigation before the FCC and the courts over, e.g., access to numbering resources, support for federal and State universal service programs, and interconnection policy, all at taxpayer/ratepayer expense. It also is, if not the cause, certainly a significant root cause for the call completion problems that continue to plague your constituents in rural areas

6. What, if any, are the implications of ongoing intermodal competition on the role of the FCC in spectrum policy?

NARUC has not taken positions on the issues raised by this question.

7. What, if any, are the implications of ongoing intermodal competition at the service level on the FCC's role in mergers analysis and approval?

NARUC has not taken positions on the issues raised by this question.

8. Competition at the network level has been a focus of FCC regulation in the past. As networks are increasingly substitutes for one another, competition between services has become even more important. Following the *Verizon* decision, the reach of the Commission to regulate "edge providers" on the Internet is the subject of some disagreement. How should we define competition among edge providers? What role, if any, should the Commission have to regulate edge providers – providers of services that are network agnostic?

NARUC has not taken positions on the issues raised by this question.

9. What regulatory construct would best address the changing face of competition in the modern communications ecosystem and remain flexible to address future change?

The existing structure of the federal Telecommunications Act has several features that warrant consideration in any re-write.

TECHNOLOGICAL NEUTRALITY/ FUNCTIONAL APPROACH/MECHANISMS TO LIMIT FCC'S ABILITY TO APPLY CLASSIFICATIONS INCONSISTENTLY: Congress should retain the functional approach inherent in the existing definitions of "telecommunications services" and "information services" in the current Act. Functional definitions, if applied consistently, should assure that the FCC does not intervene in the market to slant its regulations to favor a particular technology or industry segment. Although the FCC has not adhered to the technology neutrality inherent in the current definitions in Title II, objectively, they do provide an excellent model for moving forward, provided that Congress can find a way to limit the FCC's ability to apply these basic classifications inconsistently. To date, the Courts have generally limited application of the specific provisions in the 1996 legislation designed to do just that.

MARKET TOOLS & PRESERVATION OF STATE AVENUES FOR CONSUMER REDRESS: Recall, also, the current federal legislation provides numerous tools for the FCC to forebear from imposing regulations where conditions warrant and even a very specific and broad provision to preempt any State or local law that prohibits or has the effect of prohibiting any telecommunications service provider from providing any telecommunications service. Significantly, even in that provision, 47 U.S.C. S 253, which gives the FCC, upon complaint, a broad charge to eliminate State laws that may prohibit the provision of competitive services, Congress included an equally crucial preservation of State avenues for consumer redress of service quality complaints as well as preservation of State universal service programs/measures. Again, in any rewrite, it makes little sense for Congress to take State "cops" off the beat or otherwise limit State avenues for consumer redress (or even specify the State mechanism that must be used for consumer redress).

USE OF FEDERAL STATE JOINT BOARDS/SUNSHINE REFORM: Third, Federal – State joint boards do provide a useful function. The efforts to rein in the abuse of the FCC lifeline program is perhaps the latest example where the Joint Board's recommendations, based in part on long-standing State programs, assisted the agency in crafting possible solutions to the problems presented. The Boards certainly provide an additional forum where the costs and benefits of any proposed changes to the federal universal service program can be weighed. Unfortunately, the FCC almost never makes use of them. Congress should consider ways to assure that the federal universal service program is reviewed periodically by the Federal State Joint Board on Universal Service, including supported services. As part of its review, Congress should also adjust the sunshine rules to allow FCC Commissioners to participate in deliberations involving the rest of the board.

10. Given the rapid change in the competitive market for communications networks and services, should the Communications Act require periodic reauthorization by Congress to provide opportunity to reevaluate the effectiveness of and necessity for its provisions?

NARUC has not taken positions on the issues raised by this question.

NASUCA
NATIONAL ASSOCIATION
OF STATE UTILITY
CONSUMER ADVOCATES

June 13, 2014

The Honorable Fred Upton
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Washington, D.C. 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
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The Honorable Greg Walden
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The Honorable Anna Eshoo
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Washington, D.C. 20515

Dear Chairmen Upton, Walden and Ranking Members Waxman, Eshoo:

Enclosed are National Association State Utility Consumer Advocates ("NASUCA") comments on Modernizing the Communication Act. These were e-mailed on June 13, 2014 and we are now sending a hard copy to the committee.

Sincerely,

Charles Acquard, Executive Director
NASUCA
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Silver Spring, MD 20910
[redacted]

NASUCA
NATIONAL ASSOCIATION
OF STATE UTILITY
CONSUMER ADVOCATES

June 13, 2014

RESPONSE TO HOUSE COMMITTEE ON ENERGY AND COMMERCE
"THIRD" WHITE PAPER"

NASUCA[1] submits these comments to the House Committee on Energy and Commerce ("Committee") in response to the Committee's request.[2] NASUCA comments on each of the ten "Questions for Stakeholder Comment." NASUCA very much appreciates the opportunity to comment.

As a general overview, market power analysis is still needed and should be done by the FCC for services subject to its jurisdiction. Regulation must remain when market power or market failures exist. Whether intermodal services are substitutes for one another requires economic analysis and the application of the law relative to substitutes.

Although the nature of the telecommunications industry does not always permit a precise demarcation, the Communications Act generally limits FCC to regulating interstate telecommunication services and gives the states exclusive jurisdiction over intrastate telecommunications services and provides for dual jurisdiction over cable, the Internet, and wireless. See 47 U.S.C. §§ 157 nt, and 201, 301, and 601 et. seq.; *Louisiana Pub. Serv. Comm'n v. FCC*, 476 U.S. 355 (1986)

Questions for Stakeholder Comment

1. How should Congress define competition in the modern communications marketplace? How can we ensure that this definition is flexible enough to accommodate this rapidly changing industry?

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[1] NASUCA is a voluntary, national association of consumer advocates in more than forty states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[2] http://energycommerce.house.gov/sites/republicans.energycommerce.house.gov/files/analysis/CommActUpdate/20140519WhitePaper-Competition.pdf.

Congress has never defined what competition is under the Communications Act of 1934. The Communications Act defines the purpose of the Act in Section 1 (47 U.S.C. 151) as "regulating interstate and foreign commerce in communications by wire and radio so that all people have rapid efficient, Nation-wide and world-wide wire and communication services with adequate facilities at reasonable charges and without discrimination (collectively "Communication Goals"). Section 3 of the Act (47 U.S.C. 153) contains various definitions but no definition of competition. Elsewhere, Congress has spoken about competition through various laws dealing with antitrust and competition such as the Sherman Antitrust Act and the Federal Trade Commission Act. Congress need not define competition but rely upon 80 plus years of experience with the Communications Act.

2. What principles should form the basis of competition policy in the oversight of the modern communications ecosystem?

As quoted above, Section 1 of the Act sets forth the policies that underlie the Act: that all people have rapid efficient, Nation-wide and world-wide wire and communication services with adequate facilities at reasonable charges and without discrimination. In furtherance of such policies, the Communications Act focuses on regulating companies and entities that have a significant interest in communications activities. See Section 4 (b)(3) (47 U.S.C. 154).

Regulation is needed where market power exists and/or market failures exist that frustrate or inhibit the Communications Act Goals.[3] The presence of more than one provider at one location, for example, says nothing about the presence or absence of more than one provider at another. In 2010, the FCC returned to a traditional market power analysis, focusing on basic principles of competition policy, including the FTC/DOJ Horizontal Merger Guidelines.[4] The Committee cites to intermodal alternatives as the predicate for this and other questions. Intermodal alternatives have not been shown to compete with traditional telecom services.

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[3] / See Chairman Wheeler's Remarks at Mountain View California on January 9, 2014 at Computer History Museum where Chairman Wheeler state: That's why the best way to speed technology transitions is to incent network innovation while preserving the enduring values that consumers and businesses have come to expect. Those values are all familiar: public safety, interconnection, competition, consumer protection and, of course, universal access.

[4]/ See *Petition of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area*, WC Docket 09-135, Memorandum Opinion and Order, 25 FCC Rcd. 8622 (2010) (*FCC Qwest Phoenix Forbearance Order and/or Phoenix Order*), *affirmed by the United State Court of Appeals for the Tenth Circuit,* 689 F.3d 1214 (10 Cir. 2012); See *In the Matter of Application of AT&T Inc. and Deutsche Telekom AG for Consent To Assign or Transfer Control of Licenses and Authorizations*, WT Docket No. 11-65, Order (November 29, 2011 (DA 11-1955) (the FCC permitted the withdrawal of the applications but noted the serious competition concerns identified in its Staff Analysis and Findings and subsequently released a redacted version of the Staff Analysis and Findings).

While there are intermodal alternatives today, it does not mean that those intermodal alternatives are substitutes for one another. The term "intermodal" is a bit misleading here: Competition today consists mostly of duopoly wires and the services that can be supplied over those wires (if and where there are two). The major wireless carriers have substantial market power, and their services are still only complements to, not substitutes for, wireline telecom and information services. To determine what is a substitute requires econometric quantitative analyses as to reasonable interchangeability. Reasonable interchangeability is dependent on cross-elasticity analyses. In 2002, the 10th Circuit Court of Appeals reaffirmed that a determination of a relevant market rests on a determination of available substitutes.[5]

In the *Phoenix Order* the FCC concluded:

> [N]either Qwest nor any other commenter has submitted evidence that would support a conclusion that mobile wireless service constrains the price of wireline service. For example, Qwest has produced no econometric analysis that estimate the cross-elasticity of demand between mobile wireless and wireline access services. Nor has it produced any evidence that it has reduced prices for its wireline services or otherwise adjusted its marketing for wireline service in response to changes in the price of mobile wireless service. Nor has it produced any marketing studies that show the extent to which consumers view wireless and wireline access services as close substitutes.[6]

Similarly, the FCC reaffirmed its position that wireless service does not effectively constrain ILEC market power for residential wireline services:

> Although the leading mobile providers have ubiquitous networks, as described above, we cannot conclude on the basis of this record that residential mobile voice services fall within the same relevant product markets as wireline services. Nor is there any evidence that mobile wireless carriers are likely to alter their pricing strategies dramatically to offer a closer substitute to Qwest's local service offerings in response to a small but significant and non-transitory increase in the price of fixed mass market services, particularly given that the majority of consumers already purchase mobile wireless services at current price levels.[7]

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[5]/ *Telecor Communications, Inc. et. al., v. Southwestern Bell Telephone Company*, 305 F.3d 1124, 1130 (10th Cir. 2002) (*Telecor*); accord *Eichorn, et. al. v. AT&T Corp., et. al.*, 248 F.3d 131 (3rd Cir. 2001).

[6]/ *Phoenix Order* at 8651, ¶ 55.

[7]/ Phoenix Order, at para. 83.

The public interest requires continuation of the enduring values during and after the current IP transition. Those enduring values must also be supported by market power analysis.

3. How should intermodal competition factor into an analysis of competition in the communications market?

Intermodal competition may not be in the same relevant product or geographic markets. In the days of the AT&T monopoly, network reliability and the quality of voice transmission was generally high. In the current environment, by contrast, with many carriers participating in the carriage of calls, network reliability has degraded, with many calls failing to complete, especially to rural areas, and the quality of voice transmission has often deteriorated. Good network reliability and good quality voice transmission should be added as explicit statutory goals. See response to 2 above, discussing what is necessary to show a product is a substitute.

4. Some have suggested that the FCC be transitioned to an enforcement agency, along the lines of the operation of the Federal Trade Commission, rather than use broad rulemaking authority to set rules *a priori*. What role should the FCC play in competition policy?

The FCC should play a role in both aspects of competition policy. Post-facto enforcement requires consumers to be harmed before the enforcement can occur. Setting rules *a priori* protects consumers before the fraudulent, abuse or otherwise harmful behavior can occur. Vigorous enforcement of the rules is also necessary. Further, the FCC has licensing obligations related to wire, radio and broadcasters and a host of other responsibilities which require oversight and rulemaking. These functions should continue.

5. What, if any, are the implications of ongoing intermodal competition at the service level on the Commission's authority? Should the scope of the Commission's jurisdiction be changed as a result?

At the service level, there will always be consumer protections needed for telecom and information services. And the limited competition described above (see 2 above) should not be used to constrain the Commission's authority.

6. What, if any, are the implications of ongoing intermodal competition on the role of the FCC in spectrum policy?

No implication. Spectrum should be managed for the public good.

7. What, if any, are the implications of ongoing intermodal competition at the service level on the FCC's role in mergers analysis and approval?

See 2 and 4 above.

8. Competition at the network level has been a focus of FCC regulation in the past. As networks are increasingly substitutes for one another, competition between services has become even more important. Following the *Verizon* decision, the reach of the Commission to regulate "edge providers" on the Internet is the subject of some disagreement. How should we define competition among edge providers? What role, if any, should the Commission have to regulate edge providers – providers of services that are network agnostic?

The questions here (last three sentences) do not follow from their premise (first two sentences). Nonetheless, edge providers should at least be subject to the non-discrimination and anti-blocking provisions of Open Internet rules. Again, competition (or the lack thereof) should not direct the level of basic consumer protections.

9. What regulatory construct would best address the changing face of competition in the modern communications ecosystem and remain flexible to address future change?

The changes in competition – much more limited than asserted by many – are adequately addressed, and remain adequately flexible, under the current statutory regulatory construct. So NASUCA's advice would be, "Keep what we have."

10. Given the rapid change in the competitive market for communications networks and services, should the Communications Act require periodic reauthorization by Congress to provide opportunity to reevaluate the effectiveness of and necessity for its provisions?

No. Telecom and information firms often complain about how uncertainty upsets investment plans. Requiring periodic reauthorization would exponentially increase uncertainty in these industries, and for their customers. Fundamentally, the work of the FCC is too important to risk Congressional deadlock on re-authorization.

Conclusion

NASUCA again appreciates the opportunity to provide these comments to the Committee. As NASUCA has stated in many previous contexts, the public interest is best served when policy-makers are not swayed by the business plans and pecuniary interests of particular companies - or indeed, particular industries. A balanced approach that considers the interests of consumers is best.

Respectfully,

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June 13, 2014

BY EMAIL TO: CommActUpdate@mail.house.gov

The Honorable Fred Upton
Chairman
Energy and Commerce Committee
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Washington, DC 20515

The Honorable Greg Walden
Chairman
Communications and Technology Subcommittee
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Re: Competition Policy in Communications Act Update

Dear Chairmen Upton and Walden:

Thank you for taking the initiative to review the laws that govern the communications and technology sectors to ensure that they are up to date. In response to your invitation for public comments on U.S. competition policies, we submit our thoughts for your consideration.

The Asian/Pacific Islander American Chamber of Commerce and Entrepreneurship (ACE) is a national organization that gives voice to the business interests of Asian Americans and Pacific Islanders.

Founded in 2012 and based in Washington, DC, ACE's mission is to serve as a strong advocate of Asian American and Pacific Islander business interests and to affect positive change on all issues that enhance and advance the goals and aspirations of our community's business owners, entrepreneurs and corporate leaders.

Asian Americans, Pacific Islanders and the Technology Sector

Asian Americans and Pacific Islanders are, together, the fastest growing ethnic group in America, having increased 46% from 2000 to 2010. Today, this community approaches 19 million in number and represents nearly 6% of the U.S. population. Our population is projected to increase to 6.5% of American total by the year 2020, and to 9.3% by the year 2050.

According to a 2010 Census Bureau Population Survey on Internet Use, Asian American households exhibited the highest rates of home computer ownership (86%) and broadband

service (81%), followed by White households (80% owned a computer and 72% had home broadband Internet services). Black and Hispanic households have lower rates both for those with computers at home (67% and 65%, respectively), and broadband service at home (57% and 55%, respectively).

Additionally, a Pew Research Center Internet & American Life Project presentation from 2011 found that 74% of Asian American Internet users sent or received email in a 24 hour period, compared to 61% of the general population. The study also found that 83% of Asian American Internet users receive their news from online sources, compared to 58% of the general population. Further, 65% of Asian American Internet users are active with social networking, compared to 44% of the general population.

Other studies have found similar trends that show the disproportionately higher rate of Asian Americans' usage of technology, such as 48% of Asian Americans owning and using mobile smartphones, which is higher than for any other ethnic or general population group. Asian Americans spend about three and a half times more time online than do other groups.

All of these studies point to the conclusion that, as consumers, Asian Americans are early and active adopters of new technology who rely on the latest products and services that these innovative industries have to offer.

In addition, data shows that Asian American participate in the communications and technology industries at high rates as entrepreneurs, innovators, investors, suppliers and workers.

According to the Minority Business Development Agency report, more than a million businesses owned by Asian American entrepreneurs generate $500 billion in sales, providing jobs for nearly 3 million American workers. While many of these entrepreneurs are in traditional brick and mortar businesses, Asian Americans are also overrepresented in the high-tech industries and in fields that rely on Science, Technology, Engineering, and Mathematics (STEM) education.

For example, Google recently released data on the demographic makeup of its work force, indicating that 34% of its employees are Asian American, which is well above the 5% that Asian Americans make up in the U.S. work force overall, according to the Bureau of Labor Statistics. Google's numbers are similar to data found by CNNMoney in 2011 that indicated nearly 20% of all Silicon Valley jobs are held by Asian Americans.

This overrepresentation of Asian American workers in the high-skilled technology industry may be explained in part by the higher rate of Asian Americans who receive college (29.3%) and graduate degrees (19.5%) compared to the total U.S. population (17.5% and 10.2%

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respectively). In addition, according to the U.S. Census, in 2011, Asian Americans accounted for 14.5% of STEM jobs, while making up 5% of the overall workforce, as noted above.

Finally, for nearly two decades, technology companies have used H-1B visas to bring high-skilled workers from Asian countries, many of whom end up becoming permanent residents in America. A 2013 report from the U.S. Citizenship and Immigration Services indicates that 64% of H-1B visas issued during the year before went to workers born in India, while the second most prevalent country of birth for these visa recipients is China. With the Philippines and South Korea in the mix, four out of the top five countries of origin for H-1B visas are Asian.

Technology has Transformed Our Lives

The reason for presenting this extensive background data on Asian Americans is simple: as active consumers, workers and job-creators in this exciting industry sector, Asian Americans and Pacific Islanders are an important stakeholder group. Therefore, the laws that Congress adopts in this area will have disproportionate impact upon our communities, and we hope you and other policymakers will seek to engage our community as you deliberate in this important area of the law.

Asian American entrepreneurs have had a direct role in contributing to the fast evolution of technology from analog to digital, copper to fiber, and wired to wireless. These tremendous changes in platforms and networks have brought us innovative products and services that utilize voice, data and video in ways that were unimaginable merely a generation ago.

Many of us grew up in an analog world with only three television channels provided through a heavy TV box with the antenna needing constant adjusting, a telephone attached to the wall with costly and limited long-distance and international calling options, and a fax machine to send important documents quickly. Today, there are literally thousands of channels of TV to choose from and we can watch just about anything from our phone, tablet, computer, projector screen, or even a traditional TV set. We do not even have to watch when a TV program is aired live – we can choose to time-shift, record, pause, delete the ads, or re-watch at a time and place most convenient to us.

We are no longer tied to the wall or a desk when we make or receive phone calls since we can talk from mobile devices of every variety from just about any place in America. In fact, we do not even have to make phone calls to talk with friends. Instead, we can see each other in real time while carrying on multiple-way conversations on screen using video conferencing.

We can remain virtually connected to each other 24/7 even after a phone call ends by chatting, texting, instant messaging, or using any other online social media platform. And if we

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need to share documents, why use a cumbersome fax machine or emails when we can all log onto a software program and edit the same document together in real time?

This is the power of broadband and wireless technology that has transformed the worlds of voice, data and video. There is no doubt that competition in these industries is robust and dynamic, and continuously changing, to the benefit of the American consumer.

We now live in a world where the consumer is in charge. If we do not like a particular product or service, we have the freedom to vote with our feet and try another service provider. And if we do not like that service either, then it is only a matter of time before a better version of the service will be brought to the market as some creative person is probably working on that new product or service right now in some garage, lab or on a college campus.

Most, if not all of the Asian American-owned businesses that ACE represents, utilize these powerful technology tools every day to communicate with customers and workers and to grow their businesses to compete in a global marketplace. And many of our members benefited from the newly created opportunities that came from the technological transformations.

ACE's Views on Competition Policy

All of these products and services were created through innovations that flourished through the power of broadband Internet that took off in the past two decades. Yet, it is ironic that the last time the laws that impact this industry sector were adopted was in 1996 when Congress passed the Telecommunications Act to update the 1934 Communications Act.

ACE agrees with you that these laws are inadequate to address the needs of today's industry which looked nothing like the world when these laws were first adopted. It is time for Congress to update the laws to reflect the world of tomorrow's innovations, instead of the world of analog TV that we grew up in.

We believe that the most important policies that Congress can adopt are ones that will promote innovation and investments, which will allow new participants to enter and compete freely for the benefit of consumers. We cannot envision today who or what these new players will look like, but Congress should be careful to not create unnecessary barriers around artificial definitions of services or products that could limit future entrants.

Many Asian American businesses began with an innovator who had a vision. The vision led to experimenting which led to investments which led to job creation. These entrepreneurs should not have to stop and consult an army of lawyers in order to seek permission to enter the communications marketplace before pursuing their passions.

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We also believe that Congress should adopt technology-neutral approaches because robust technologies cannot be confined to siloes or to traditionally-defined business models. As we have seen over the past two decades, over-the-air TV service is almost extinct, but in its place, consumers are now watching more programming than ever before from sources that were unlikely players in the past, such as cable, satellite, phone, Internet, and cloud.

Likewise, advanced wireless technology has spawned multi-billion dollar industries in sectors unimaginable a generation ago, such as smart home appliances and energy meters that monitor themselves, safer cars that track maintenance needs, location-enabled services that save consumers time and effort, educational tools for kids on the go, and personalized healthcare that could save lives.

We do not know what products and services the next wave of technological advances will create but we do know that the future will be one of convergence as innovation spurs other innovation. Therefore, we urge Congress to keep from regulating the technologies themselves, and instead focus on the goals of the technology, which is to provide consumers with choices.

Finally, we recommend that Congress avoid maintaining the regulatory framework from the 19th and 20th centuries that are embedded in the current Communications Act which tries to squeeze the square pegs of today's business innovations into the round holes of government jurisdictional siloes.

When it comes to high-tech industries, rigid regulations can and do become outdated long before the ink is dry on the legislation. As entrepreneurs and business owners, we have to comply with excessive and outdated government regulations that do not make sense but are still on the books. Our members would much rather invest their resources into areas that will spur the company's growth than to check the box for a bureaucratic authority.

We believe that a better model for enforcing behavior in this cyber-world is a forward-looking set of guidelines for industry players to follow that protects the consumers' needs. For example, most consumers in today's Internet marketplace want ubiquitous access, ease and convenience, affordability and security. They want to be able to transition immediately between and among a wide variety of service providers and product offerings.

Congress should ensure that consumers can enjoy all the services and products while being protected during their online activities. The laws should require industry players to be transparent with their terms and conditions and provide quick resolutions to consumer billing or service quality complaints. The laws should also require companies to treat consumer information with utmost security and privacy and not hinder access to legitimate services.

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There are many examples of effective self-regulatory organizations in the commercial marketplace that we believe Congress could look to as models to oversee the constantly-evolving Internet environment. We believe there is also a legitimate role for the government to step in and go after egregious players that harm consumers or competition and to enforce the wide array of consumer protection and anti-competitive laws already on the books.

Such a set of guidelines that treats all of the segments in the Internet marketplace equally, regardless of technology or business model, would create certainty in the marketplace and allow for new entrants and more investments to flow.

We offer these ideas in an effort to ensure that the United States remains a global leader in the communications and technology sectors which continues to provide the most innovative products and services for American consumers and strong opportunities for growth to American businesses and workers. On behalf of ACE, we thank you again for your interest in updating our nation's communication laws and we look forward to working with you to achieve these goals in the coming months and years.

Sincerely,

[redacted]

Sach Takayasu
President & CEO

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June 13, 2014

Dear Chairman Upton and Representative Waxman:

The National Black Chamber of Commerce praises the House Energy and Commerce Committee for tackling reform of the Communications Act, and doing so in a bipartisan manner. The Chamber is dedicated to economically empowering and sustaining African American communities through entrepreneurship and capitalistic activity within the United States, and a reformed Communications Act will undoubtedly aid in our efforts.

We appreciate the Committee's efforts to solicit stakeholder comment and respectfully submit our recommendations below.

The communications marketplace in 2014 is highly competitive and dynamic. Newer, more innovative and better products and services are constantly entering and disrupting the market. Americans have a true variety of options to fulfill their communications needs outside of traditional landline phone service: mobile voice, text message, email, social networks, VoIP, wireless home services and fiber optic cable, to name a few. Americans everywhere and African Americans in particular are taking advantage of this range of options; African Americans are more likely than whites to own cell phones, including smartphones, and use social networking more frequently than whites.

The regulatory framework put in place by the Communications Act, however, does not reflect this varied and dynamic marketplace. Signed into law eight decades ago and revised only once, in 1996, the Communications Act as it stands is insufficient for the 21st century. In 2014, participants in the communications market often operate across multiple platforms in many different segments of the marketplace. That is why a "siloed" or niche approach to regulation is inadequate. Instead, Congress should adopt a "technology-neutral" regulatory policy in regards to a particular technology, provider, or business model.

Furthermore, an updated Communications Act should embrace a multi-stakeholder governance model, one which ensures that a diverse range of stakeholders, including consumers, small businesses, academia, and lawmakers are represented. An ideal model would also minimize regulation, which stifles investment, innovation and experimentation. A "light-touch" regulatory framework would produce the opposite effect: investors, more confident that their investments will yield profits, will invest in innovative new technologies that will ultimately benefit the public.

We at the Chamber acknowledge that passing any meaningful legislation in Washington today is challenging, but we are encouraged that the effort to reform the Communications Act is being done in a bipartisan manner. The Chamber will closely monitor the Committee's progress in the coming months and we are available to assist the Committee in any way to help pass meaningful reform legislation.

Sincerely,

[redacted]

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Where Business Begins

Competition Policy and the Role of the Federal Communications Commission: Questions for Stakeholder Comment

Responses of the National Cable & Telecommunications Association

1. How should Congress define competition in the modern communications marketplace? How can we ensure that this definition is flexible enough to accommodate this rapidly changing industry?

Today's communications markets are larger, more complex, and more multifaceted than ever before. In every key component of the communications marketplace – video, voice, and data – there is stiff competition among numerous sophisticated providers. New options and new bundles of services, tailored to fit the full spectrum of consumer preference, emerge constantly. In such an environment, competition should be defined by reference to the availability of consumer choice.

A competitive market is one in which consumers have the ability to make meaningful, informed choices, from among a variety of options, about the products and services that are available, and the price points at which they receive them. No longer can "competition" be viewed solely by reference to the availability of substantially identical offerings. To the contrary, today's market, in which consumers increasingly have access to myriad offerings and the ability to make informed choices among them, has led entrepreneurs to respond to consumer demands with clearly differentiated products and services featuring various combinations of features and functions, all of which compete to be the consumers' preferred provider.

In the market for video consumption, for example, consumers have an array of options from which to choose. Once relegated to console television sets, and then, only quite recently, to a small portion of the screen on desktop computers, video can now be streamed, saved and viewed on nearly any screen with an Internet connection. While once the providers of video services were limited to broadcasters, and then cable operators, and then video rental stores and direct broadcast satellite ("DBS"), telephone companies, and overbuilders, consumers can now obtain video content from a constantly expanding cornucopia of sources. Not only have the traditional multichannel video programming distributors enormously expanded their array of program offerings, but much of this same content, along with all sorts of new and different video content, is available from many different online sources, as part of multichannel offerings, a subscription service offering access to individual programs, or on an on-demand basis. These services are not identical, but increasingly, viewers consider them competitive alternatives, choosing the service or services among them that best fits their needs.

As the communications marketplace continues to change, in video and other options, it is critical that Congress's view of competition evolve with it. An expanded view of the competitive landscape could help promote a surge of innovation that increases productivity, reduces prices, improves quality, and leads to even more choices.

2. What principles should form the basis of competition policy in the oversight of the modern communications ecosystem?

Modern communications competition policy should allow market forces and consumer preferences to govern whenever possible, establish technological neutrality, and ensure regulatory parity. A law formed around these principles leads to a competitive market in which consumers have meaningful choice.

Allowing Market Forces To Govern. In today's highly competitive communications marketplace, there is no need for lengthy and detailed regulations governing products, services and behaviors. The marketplace should remain as deregulated as possible, to allow providers to innovate in creative ways that respond to marketplace demand. Rather than attempting to prescriptively address thousands of topics, the law should be as streamlined as possible, maintaining a simple, deregulatory environment that relies primarily on market forces to constrain anticompetitive behavior.

It is important to recognize that as the communications ecosystem continues to develop, companies will need to continually invest in new products and services, and expand and upgrade their networks, to meet increasing consumer demands. To do so in an effective and timely manner, providers will need to expand their geographic reach, take advantage of economies of scale, and share technologies and services where appropriate. While these developments may change the appearance of the communications landscape, they are a natural result of the communications marketplace becoming more global. Rather than engage in isolated, impetuous reactions against change or try to regulate markets based on hypothetical harm, regulators should focus on ensuring they have the ability to address problems if and when they arise.

Technological Neutrality. Modern competition policy should promote technological neutrality. The law should not give special advantages to use of any particular technology, or condition deregulatory status on a particular technological offering. A law that confers a regulatory advantage on a particular technology, or that deregulates not when marketplace forces warrant, but when a favored technology is used, is a serious threat to competition. Companies facing fierce competition will respond to what consumers want, as providers continuously seek to differentiate themselves and their products and services. Requiring providers to arrange and offer service in a particular way hinders their ability to create and respond to market demand. The constant invention and adaptation in this marketplace has been good for consumers and for our economy. Experimentation in new services and new business models should be encouraged. Decisions about what technology to use should not be driven, or even affected, by a need to fit a service into a particular regulatory box. A technology-based approach creates a perverse incentive for providers to select the technologies they use based on a particular regulatory result even if they do not necessarily respond to consumer demand most effectively and efficiently, and to hold onto that technological approach, even long after it has outlived its usefulness.

Regulating Like Services Alike. Competition policy should ensure that like services are treated alike. While historically, determining which law governs a communications business depended on three elements – the technology used, the particular service being offered, and particular company doing the offering – modern data networks and service providers are capable of providing virtually any kind of communications product or service. These similarly situated

companies should not be regulated differently. Providers of the same or similar service to consumers should play by the same rules, so that they can compete for consumers on a level playing field.

3. How should intermodal competition factor into an analysis of competition in the communications market?

Any analysis of whether or not any particular market is competitive should focus on whether in that market, consumers have choices among providers to meet their needs in each of the core areas of video, voice and data.

With respect to video competition, for example, any analysis of how competitive the market is must take into account all providers of video, whether it be a traditional multichannel video programming distributor, a telco or DBS provider, a wireless provider offering video content, or an online video distributor. Such services are competing, in at least some segments of their offerings, regardless of technology used and regardless of how much market share each participant has secured, because each offers the consumer a different choice and the ability to select the video offering that best meets the consumer's needs and interests.

4. Some have suggested that the FCC be transitioned to an enforcement agency, along the lines of the operation of the Federal Trade Commission, rather than use broad rulemaking authority to set rules *a priori*. What role should the FCC play in competition policy?

The FCC should be limited in its ability to try to create communications markets. There is no need for the FCC to seek to promote the development of any particular market when competition is thriving, and experience has shown that such efforts are rarely successful. The FCC's set-top box integration ban, for example – in which the FCC required the use of CableCARDs in devices leased by cable operators as well as third party devices, as part of an effort to create a market for retail set-top boxes – proved a costly failure. Customers were not interested in purchasing third-party devices at retail, and technological advances soon surpassed the relevance of the FCC's efforts. Consumers began (and continue) to access video content via a broad and growing array of CPE devices, including iOS and Android tablets and smartphones, PCs and Macs, game consoles and other video devices, but contrary to the FCC's predictions, none of the devices that consumers wanted relied on CableCARDs. The FCC is simply not equipped to make predictions about the quickly changing communications marketplace and should refrain from attempting to steer its direction.

While the FCC has a role in monitoring and safeguarding markets, it should be limited in its authority to affirmatively create economic conditions for markets and set terms, conditions, and prices. Network capabilities, product prices and packages, and customer service should be shaped by market forces and consumer preferences rather than by government regulation. Because of the availability of multiple substitutes for the video, voice and data offerings furnished by communications companies, retail price and service regulations are no longer necessary to serve as proxies for the disciplining effect of a competitive market. Companies should not be saddled with the cost of legacy regulations inferior to market forces in terms of demonstrably improving service or customer experiences.

Finally, there should be demonstrable evidence of harm to justify any FCC intervention in economic decisions. Even where there is market failure or anticompetitive harm, the FCC should look to principles of antitrust enforcement and competition policy rather than seek to institute economic regulations *a priori*. As FCC Chairman Wheeler recently acknowledged, "[i]f the facts and data determine that a market is competitive, the need for FCC intervention decreases."[1/]

5. What, if any, are the implications of ongoing intermodal competition at the service level on the Commission's authority? Should the scope of the Commission's jurisdiction be changed as a result?

As intermodal competition continues to increase, the Commission's ability to impose extensive regulations should be constrained in favor of a market-based approach.

6. What, if any, are the implications of ongoing intermodal competition on the role of the FCC in spectrum policy?

The FCC should continue to increase the availability of unlicensed spectrum for mobile data uses. Licensed and unlicensed uses offer different opportunities and benefits, and the best spectrum policy will balance these needs so as to maximize innovation and investment.

Many cable operators use unlicensed spectrum to offer Wi-Fi services that add value to their broadband service offerings and distinguish themselves from their competitors. Unique among MVPDs, cable operators have constructed hundreds of thousands of public Wi-Fi hotspots around the country. These hotspots allow cable broadband subscribers access to the Internet at no extra charge when they are away from home, essentially extending the reach of their cable broadband subscriptions. The hotspots also allow cable broadband subscribers to jump off the cellular network and onto the Wi-Fi network, which makes cellular networks less crowded and allows subscribers to save their wireless data usage.[2/]

While Wi-Fi coverage is not widespread enough to be a complete substitute for cellular networks, the Wi-Fi networks do give the cable companies the ability to offer a complementary service that consumers increasingly rely on to meet their mobile data needs. Potentially, cable operators also could create a "Wi-Fi-first" service, which relies on Wi-Fi where it is available and resorts to commercial mobile radio service in areas where Wi-Fi is not available, which could more directly compete with licensed mobile offerings.

Unlicensed services like Wi-Fi also drive significant economic growth and innovation in the United States. A recent study concluded that unlicensed spectrum generated $222 billion in value for the U.S. economy in 2013 and contributed $6.7 billion to U.S. Gross Domestic Product

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1/ Prepared Remarks of FCC Chairman Tom Wheeler, The Ohio State University, Columbus, OH (Dec. 2, 2013), *available at* http://www.fcc.gov/document/remarks-fcc-chairman-tom-wheeler-ohio-state-university.

2/ About 57% of all mobile data traffic in North America is currently carried by Wi-Fi, and by 2018 that figure is expected to increase to 64%, according to Cisco.

("GDP") over the same period. The study makes it clear that unlicensed technologies create jobs, encourage innovation, and generate billions in value for the U.S. economy. Policymakers similarly have acknowledged that unlicensed spectrum technologies like Wi-Fi are "vital to our economy . . . [,] have transformed the personal electronics industry, and are poised to make substantial contributions to the retail, manufacturing, and other sectors."[3/]

As Americans rapidly increase their use of and dependence on Wi-Fi technologies, however, existing unlicensed spectrum resources are becoming increasingly congested. If current unlicensed spectrum bands become too congested, the accompanying decrease in Wi-Fi and cellular speeds, service degradation in public places, and erosion of the benefit to mobile carriers generated by offloading could put the economic and competitive benefits generated by the unlicensed sector at risk. While the Commission took an important first step by making parts of the 5 GHz spectrum band usable by Wi-Fi, it must continue to prioritize designating additional unlicensed frequencies suitable for Wi-Fi. The ability of unlicensed technologies to enhance competition and make important contributions to the national economy depends on access to adequate spectrum resources.

7. What, if any, are the implications of ongoing intermodal competition at the service level on the FCC's role in mergers analysis and approval?

In any FCC analysis of the competitiveness of a market, including during consideration of a merger, it is critical that the FCC take all forms of competition into account. *See* NCTA Response to Questions 1-3 above.

8. Competition at the network level has been a focus of FCC regulation in the past. As networks are increasingly substitutes for one another, competition between services has become even more important. Following the Verizon decision, the reach of the Commission to regulate "edge providers" on the Internet is the subject of some disagreement. How should we define competition among edge providers? What role, if any, should the Commission have to regulate edge providers – providers of services that are network agnostic?

NCTA's views on this issue are set forth in its recent comments filed in the FCC's Open Internet docket. *See Protecting and Promoting the Open Internet,* GN Docket No. 14-28, Comments of the National Cable & Telecommunications Association at 10-11 (filed March 26, 2014).

9. What regulatory construct would best address the changing face of competition in the modern communications ecosystem and remain flexible to address future change?

Today's regulatory construct reflects increasingly obsolete distinctions, and its structure is ill-equipped to deal with the fluidity of today's marketplace. Regulations governing today's communications providers must recognize that networks once constructed and optimized to provide a single service – voice or video, for instance – are now capable of providing voice,

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3/ White House Office of Science and Technology Policy & The National Economic Council, Four Years of Broadband Growth, at 20 (June 2013).

video, and data and increasingly compete with one another in the provision of multiple services. Any new construct should eliminate regulatory silos to reflect how companies compete and innovate, and how consumers use and enjoy services.

10. Given the rapid change in the competitive market for communications networks and services, should the Communications Act require periodic reauthorization by Congress to provide opportunity to reevaluate the effectiveness of and necessity for its provisions?

The law should be evaluated periodically to determine if changes are needed to address developments in competition; additionally, the FCC should be empowered to make limited necessary adjustments, rather than requiring Congress to reauthorize the Act.

June 4, 2014
Lugano, Switzerland

Hon. Fred Upton
Chairman
Energy and Commerce Committee
US House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Hon. Greg Walden
Chairman
Communications and Technology
Subcommittee
Energy and Commerce Committee
US House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Communications Act Update, perspective on Chinese internet policy and the US

Dear Congressmen Upton and Walden:

I am a Ph.D. candidate who studies internet governance in China at the at the Institute for Media and Journalism at the Università della Svizzera italiana (USI) in Switzerland http://www.imeg.com.usi.ch/en/index. I am also the assistant editor at the China Media Observatory http://www.chinamediaobs.org/ which studies the development of the media in China. Following are my observations about what is important for the US as it reviews its communications competition policy in light of the Communications Act update. Internet regulation has been used by the Chinese state as a way to capture power and revenue and provides a cautionary tale for the US.

Since 2008 the Chinese Internet has been the world's largest in terms of users. While the Chinese Internet has grown quickly, Chinese internet regulation is still facing several issues regarding the *rule of law* and *rule by law*.

According the latest data provided by the China Internet Information Center in January 2014, China had 618 million users at the end of 2013. Its penetration rate was 45.8%, meaning that almost half of the Chinese population was online. Moreover there are more than 500 million mobile internet users, which is 200 million more than America's impressive 300 million mobile broadband subscribers. That means that more than 80% of all Chinese internet users come to the internet by a mobile device.

Americans have always enjoyed an unfettered mobile internet experience, but this is not the case in China. Chinese authorities not only have strict regulation on Chinese communications and media providers, they routinely block foreign content and applications. It borders on the comical how some Americans, who enjoy some of the fastest, most robust internet connections in the world and all the of content and applications of their choice, complain of net neutrality concerns. They don't understand that real internet freedom means using a system that is not under the thumb of the government.

In any case, the Chinese blocking practice is itself a trade barrier which the country has used successfully to build its own internet industry. China has its home grown and government approved versions of Google (Baidu), Facebook (Renren), Twitter (Sina Weibo, QQ Weibo),

WhatsApp (Weixin, also known as WeChat), and Amazo and Ebay (Taobao, Aliaba), not to mention YouTube (Sohu.com and Youku). Many of these Chinese variants are among the world's

top 20 most visited websites. In fact the revenues of Alibaba are higher than eBay and Amazon combined. According to a *Boston Consulting Group* report, the Chinese internet accounted for 5.5% of the country's gross domestic product in 2012, even higher than the US at 5%.

To date, these companies have focused on serving the Chinese market. But that does not mean that they won't look to the US in future. China launched *Baidu Japan* already in 2008. More recently the success of the Chinese WeChat in Western markets represents a clear example of how Chinese internet applications can compete with American ones.
In effect the American internet policies designed to promote openness and competition, which incidentally also encourage significant infrastructure investment in the US, also help Chinese internet companies, even though the Chinese don't play by the same rules nor share the same values as Americans.

To be clear, Chinese Internet regulation has evolved, becoming more solid and clear, but there are still deep contrasts between several ministries, departments and agencies. This amounts to strict regulation of communication companies and mandates against companies engaging in business practices which take advantage of the convergence of media, IT and communications that benefits consumers in the rest of the world. For example telecommunication enterprises are prohibited from engaging in radio and broadcasting operations (including wire and wireless) while broadcasting departments are prohibited from engaging in telecommunications activities. These divisions were established in 1998 by the Ministry of Information Technology (MIT) which oversees telecommunications.

In the same year in an effort to ensure control the information, the new ministry was created, the State Administration of Radio Film and Television (SARFT), by combining the Chinese Communist Party propaganda department and the former Ministry of Radio Film and Television. In 2013 SARFT was strengthened with the addition of oversight for the press, publication and copyright, essentially giving it jurisdiction over all media in China. It is now called SAPPRFT, the State Administration of Press, Publications, Radio, Film and Television.

In other words, the process to regulate the Internet in China amounts to the enriching the MIT with compulsory kickbacks from Internet infrastructure providers on one the hand, and control of information and national security by SAPPRFT on the other. Imagine Congress giving the Federal Communications Commission jurisdiction over all media (radio, TV, film, print, internet AND copyright), and this is effectively what happened in China.

The structure of Chinese internet regulation is a product of forces which include the State and Chinese society but also Internet industries which attempt to strike a balance between the needs of "officialdom" and so called "Chinese civil society". This scenario also illustrates the challenges of creating optimal regulatory policy when different parties and agencies compete to capture value from the internet value chain.

The Chinese story illustrates that regulation, regardless of how well-intentioned, can have unintended consequences which do not serve the purposes originally intended. Indeed, the constitutive choices (cfr. Starr, 2005) made by the Chinese Communist Party were to establish not only an economic resource through communications infrastructure, but a process of *informatization*

through the Internet, essentially a means to manage society. With the rise of Chinese Web 2.0 participatory platforms, the Internet in China has become a tool, if not a product, of the state.

Indeed China is an extreme example, but it is not difficult to imagine that the US could go in a similar direction, especially if Congress opens the door to internet regulation. By asking the government to ensure a free and open internet, Americans unwittingly give power to the forces that can use the Internet against them.

In this way the process to update the American Communications Act should be an opportunity to limit government involvement in the internet. The approach taken by Congress to date, limiting government

involvement in the internet, has served the US well. As such, Congress should guard against giving federal agencies any increasing power to police the internet. If anything, the power of the FCC should be reduced, not strengthened. Should market abuses occur, they can be adjudicated through competition law. The US has no shortage of lawyers, and the use of the courts is robust.

Sincerely,
Gianluigi Negro

Modernizing the Communications Act – Modern is Consumer-Driven Competition

Obsolete presumption of telephone and cable monopolies: The core policy problem with monopoly-premised communications law is that it is hostile to the reality of a vibrantly competitive communications marketplace.

- The 1934 Communications Act incorrectly presumes telecommunications is a monopoly. Since 1996, long distance has evaporated from a court-ordered artificial industry to essentially a free feature. The legacy telephone monopoly PSTN has become so obsolete and competitively irrelevant that the FCC has committed in the IP transition to shut down the legacy telephone PSTN in the next few years.
- The 1992 Cable Act incorrectly presumes cable is a monopoly. Since 1992, almost half of American households have switched to a cable competitor's video subscription service (via satellite, fiber or DSL), and non-facilities based Netflix has become America's leading video subscription service provider.

Transitional legislation unable to complete the full transition to a competitive marketplace: The core policy problem with the 1996 Telecommunications Act -- that changed American communications policy from monopoly to competition -- is that it was **transitional**. It never prepared for the full deregulation warranted by the end of telephone or cable monopolies and the advent of dynamic facilities/platform-based, Internet ecosystem competition.

- A legacy transitional mindset in a fully competitive communications marketplace causes inherent regulatory conflicts of interest where regulators have self-preservation incentives to subjectively never acknowledge competitive reality and to forever move the goal-posts of what is considered "competitive" in order to retain their transitional regulatory powers.
- A transitional mindset also tends to interpret a regulator's role to "promote competition" as effectively re-distributing market share or assets from companies that have more to companies that have less, via regulatory mandates or forced subsidies, rather than standing down to allow market forces to deliver the consumer benefits of differentiated market choices, prices, innovation and investment.
- A modern competition mindset requires dynamic congressional oversight meaning **periodic statutory reauthorization of the Communications Act every five years** to ensure the law keeps pace with the rapid change in the communications marketplace.

Define "competition" as inherently:

- **Comprising *commercial* rivals, not government ones;**
- **Predicated on consumers *deciding* market winners and losers, not regulators;**
- **Ruled by *market economics* of risk and reward, not politics or lobbying for special treatment;**
- **Involving *voluntary* commercial activity not forced by government; and**
- **Offering a *level-playing-field* that is technologically and competitively neutral.**

Define "unfair competition" to include a governmental entity (municipality, state or Federal entity) offering a publicly rivalrous offering to a commercial communications entity over which it has any governmental power.

By Scott Cleland, Chairman of NetCompetition, a pro-competition e-forum supported by broadband companies www.NetCompetition.org

National Rural Electric Cooperative Association
A Touchstone Energy® Cooperative

June 13, 2014

The Honorable Fred Upton
Chairman
Committee on Energy and Commerce
US House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

The Honorable Henry Waxman
Ranking Member
Committee on Energy and Commerce
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The Honorable Greg Walden
Chairman
Subcommittee on Communications and Technology
Committee on Energy and Commerce
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The Honorable Anna Eshoo
Ranking Member
Subcommittee on Communications and Technology
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Dear Chairmen and Ranking Members:

Thank you for the opportunity to submit comments as you examine the communications industry and the Communications Act in the #CommActUpdate effort. The National Rural Electric Cooperative Association (NRECA) is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to over 42 million people in 47 states or 12 percent of electric customers. Electric cooperatives are private, independent electric utilities, owned by the members they serve. Electric cooperatives own and maintain 2.5 million miles or 42 percent of the nation's electric distribution lines, covering 75 percent of the U.S. landmass. Co-ops serve an average of 7.4 consumers per mile of line and employ 70,000 people in the United States. In Congressional Districts served by members of the Committee on Energy and Commerce, electric cooperatives serve over 6.2 million consumer owners and employ 17,308 people.

The white paper, *Competition Policy and the Role of the Federal Communications Commission,* presented questions seeking stakeholder input. In response to several of those questions, we ask the Committee to consider two main issues with regard to competition, the need for broadband deployment in rural areas, and electric utilities' need for spectrum.

As a starting point, we recognize the three principles underlying the Act. Two of these principles -- universal service and consumer protection-- are critical to the ability of telecommunications providers and the FCC to be able to provide services to rural America. The third principle – "market based frameworks" applies minimally, and in some cases, not at all in rural America. The lack of markets in rural America for telecommunications services makes the framework unworkable for electric co-ops. Unless and until markets develop in rural areas for these services, we encourage your analysis to provide for other mechanisms to ensure that rural Americans receive reliable, affordable modern telecommunications services.

Questions for Stakeholder Comment

1. **How should Congress define competition in the modern communications marketplace? How can we ensure that this definition is flexible enough to accommodate this rapidly changing industry?**

According to Wolfgang Kasper, "Economic competition takes place in markets—meeting grounds of intending suppliers and buyers. Typically, a few sellers compete to attract favorable offers from prospective buyers. Similarly, intending buyers compete to obtain good offers from suppliers.[i]

But what if there are no sellers? In that case, there is no competition. Such is the case in much of rural America.

Congress should define competition as the ability and willingness of multiple sellers to offer products and services to numerous consumers in a given market. And, absent competition, Congress should act to ensure that all consumers have the opportunity to receive the same types and levels of communications services provided to American consumers that enjoy competition.

Rural electric cooperatives were formed to provide reliable electric service to their owner members at the lowest reasonable cost and are dedicated to improving the communities in which they serve. Management and staff of rural electric cooperatives are active in rural economic development efforts. NRECA's members rely on a mix of wireless and wireline telecommunications services to support and maintain their rural electric distribution systems. Rural electric cooperatives depend on robust telecommunications infrastructure and services to support their smart grid and other operational applications and, in some cases, to offer broadband services to their members in order to support their commitment to spur economic development in the communities in which they serve.

The first decade of the 21st century has come and gone, and in 2014, too many of the communities we serve have inadequate telecommunications service. Without robust broadband, America is slowly but surely losing population, educational and job opportunities in many of the rural places that enrich our national economy and culture.

Despite federal efforts to address the "digital divide" between rural and urban areas, it continues to adversely impact some 15 million U.S. residents. The gap is widening between the urban places with numerous telecommunications options and the rural places without. The current strategies and approaches aren't working. The FCC's National Broadband Plan and the Connect America Fund were important first steps in addressing this problem, but more still needs to be done

2. **What principles should form the basis of competition policy in the oversight of the modern communications ecosystem?**

According to the National Economic Research Associates (NERA), a national economics consulting firm, (www.NERA.com/extImage/03Ecnonomicssjc4-7.pdf) "…no serious evaluation of difficult competition policy questions can be undertaken without an understanding of the relevant economics of 'how markets work." The NERA report continues, "(T)he key concept in the definition of a [relevant competition policy/antitrust] market is economic substitutability, that is, the willingness of customers to accept one product instead of another product."

Thus where there are no substitutes, there is no market. Telecommunications competition policy must recognize that competition and markets do not exist evenly in all areas of the United States.

In those areas where there is no competition, Congress should expand its policy basis to consider how best to deliver services to all Americans that are comparable to those enjoyed by consumers in areas

where markets and therefore competition exist. Congress should consider expanding existing programs that aim to close the digital divide, e.g., the USDA's Rural Utilities Service broadband grants program, and creating new programs that support the expansion of high speed broadband in rural America.

3. **How should intermodal competition factor into an analysis of competition in the communications market?**

We leave this question to those that enjoy intermodal or any other type of competition in telecommunications services. Many of our members experience no competition in telecommunications services and lack much needed access to high speed broadband service.

4. **Some have suggested that the FCC be transitioned to an enforcement agency, along the lines of the operation of the Federal Trade Commission, rather than use broad rulemaking authority to set rules *a priori*. What role should the FCC play in competition policy?**

In general, the FCC should be charged with, among other responsibilities, developing and implementing policy that closes the digital divide.

We encourage the Committee and the FCC to look at alternative approaches to bring advanced telecommunications services to rural America. Today's urban-rural digital divide is analogous to the limited scope of rural electrification in the 1930s. The low population numbers and sparse density of households make bridging the divide for rural areas more difficult from both a business case standpoint and a service standpoint. The diverse geography of rural areas compounds those difficulties and underscores the point that no single technology will be the solution to bridge the urban-rural digital divide. Given this scenario, NRECA believes it is time to consider the creation of an Office of Rural Affairs at the FCC.

An Office of Rural Affairs within the FCC will create a focus for closing the digital divide, and serve as a focal point to ensure that the FCC gives sufficient consideration to rural issues as it fulfills it multiple other missions in telecommunications. An Office of Rural Affairs within the FCC would be consistent with several of the FCC's current responsibilities including: Encouraging the development of innovative services, Public Safety and homeland security, Consumer Information and Education.

5. **What, if any, are the implications of ongoing intermodal competition at the service level on the Commission's authority? Should the scope of the Commission's jurisdiction be changed as a result?**

We leave this question to those that enjoy intermodal or any other type of competition in telecommunications services. Many of our members experience no competition in telecommunications services and lack much needed access to high speed broadband service.

6. **What, if any, are the implications of ongoing intermodal competition on the role of the FCC in spectrum policy?**

Although many of our members live in areas where there is no competition – intermodal or otherwise – spectrum policy is a concern to our members. We ask the Committee to consider that if the only policy tool the FCC uses to allocate spectrum remains auctions, our members will continue to be underserved.

Rural electric cooperatives, like other entities in the critical infrastructure industries rely on allocation and availability of spectrum for vital operational and emergency communications needs. These needs include the second-to-second balancing that must be accomplished for any electrical system, private land mobile

radio services, smart grid applications that ensure that outages are quickly and accurately reported. As the world has developed greater need for spectrum, smaller rural users with scarce capital risk losing this vital resource, to the extent that allocations are based solely on auctions. Our members' consumer owners are among the most economically vulnerable in the United States. The average household income for co-op served households is $68,347, 11.5% lower than the national average of $77,190. Excluding majority metropolitan co-ops lowers this figure to $59,659, or 23% below the national average. In general, nine-in-ten electric cooperatives have average household incomes below the national average. Furthermore, as a way of adjusting somewhat for cost of living differences, four-in-five electric cooperatives have average household incomes lower than their state averages[ii].

Thus our members, not-for-profit rural electric cooperatives don't have the capital necessary to compete with other large, for-profit entities that share our desire for spectrum.

7. **What, if any, are the implications of ongoing intermodal competition at the service level on the FCC's role in mergers analysis and approval?**

We leave this question to those that enjoy intermodal or any other type of competition in telecommunications services. Many of our members experience no competition in telecommunications services and lack much needed access to high speed broadband service.

9. **What regulatory construct would best address the changing face of competition in the modern communications ecosystem and remain flexible to address future change?**

Whatever regulatory construct the Committee prefers, it should recognize that competition for telecommunications services does not exist in all parts of the country. Further, the chosen regulatory construct should have features that address that digital divide.

10. **Given the rapid change in the competitive market for communications networks and services, should the Communications Act require periodic reauthorization by Congress to provide opportunity to reevaluate the effectiveness of and necessity for its provisions?**

Yes, the Communications Act would benefit from mandatory periodic reauthorization by Congress to ensure that current policy, technology and circumstances in the telecommunications industry are properly aligned.

We appreciate the opportunity to provide these comments and we look forward to working with the Committee as it undertakes this important assessment of the Communications Act.

Very truly yours,

Tammy K. Embrey
Senior Legislative Advisor

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[i] Kasper, Wolfgang, "Competition" in The Concise Encyclopedia of Economics, http://www.econlib.org/library/Enc/Competition.html

[ii] Co-ops with average household incomes below the US average serve over three-fourths (77%) of all co-op households, and those with household incomes below their state averages serve nearly two-thirds (65%).

NTCA–The Rural Broadband Association Comments in Response to U. S. House of Representatives Energy & Commerce Committee White Paper 3: Competition Policy and the Role of the Federal Communications Commission (Released May 19, 2014)

June 13, 2014

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INTRODUCTION

NTCA represents nearly 900 companies in an industry devoted to serving rural, sparsely populated areas where the high costs of building networks deter most communications-oriented businesses from competing for rural customers when densely populated urban areas generally offer the promise of greater and more near-term returns on investment. Even where competition may manifest in rural areas, it is almost always confined to the narrow limits of small town boundaries and thin bands of interstate highways where at least some density or demand can be found, leaving carriers of last resort and others committed to serving those communities to serve these large outlying areas. Nonetheless, convergence and other technological advancements have clearly brought some level of competition to some portions of rural areas. Particularly thanks to wired broadband networks that support both various services atop them as well as wireless services that rely upon wired backhaul (and towers), many rural customers can now purchase wireline, wireless and VoIP voice products, video services through cable TV, satellite, and IPTV, and listen to radio via broadcast, satellite, or the Internet.

These developments in both urban and rural markets compel a more accurate assessment of competition, and in particular, they support a regulatory distinction between the retail/service level and the network layer. As discussed in NTCA's Comments in response to the Committee's White Paper No. 1, because many voice, video, and radio offerings are functionally equivalent to the consumer, these retail offerings should be covered by a consistent light-touch regulatory framework regardless of the mode of delivery. However, it is also important to consumers that the networks underpinning their services and applications work seamlessly. Indeed, robust wired networks are a prerequisite to any intermodal competition and service innovation possible, and – as the rural call completion issue highlights – a lack of clear rules governing the ways in which these underlying networks interoperate and interconnect with one another can drastically hinder the consumer experience and undermine competitive offerings.

With this backdrop, NTCA submits the following response to the specific questions posed by the committee:

1. ***How should Congress define competition in the modern communications marketplace? How can we ensure that this definition is flexible enough to accommodate this rapidly changing industry?***

Competition should be defined by the functional equivalence of services, without reference to the mode by which any given service is delivered. Regulation, in turn, should proceed from the premise that functionally equivalent services should be treated equally, rather than relying upon silos that treat similar services differently based upon underlying technology. Indeed, a siloed approach hinders competition in that it enables provider arbitrage and self selection that distorts markets by granting an advantage to some services over those deemed regulated "telecom services" thanks to the network platform they ride on. Just as IP technology and convergence necessitate a departure from regulated service silos in favor of severing the antiquated tether between networks and services and regulating those two layers accordingly[1], competition must also be assessed separately at the network and service levels.

At the retail level, competition should be defined as the existence of an effective choice among providers capable of delivering specific services to consumers. Providers now offer voice, video, and other data atop fiber, cable, wireless and satellite networks. For example, the many telephone access line, wireless voice, and VoIP offerings appear functionally similar to the consumer and should be considered equivalents for purposes of assessing competition – and ultimately for purposes of making policy choices with respect to potential regulation consistent with the Core Principles set forth in NTCA's response to Committee White Paper No. 1.[2]

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[1] *See National Cable & Telecommunications Association et al. v. Brand X Internet Services et al.*, 545 U.S. 967 (2005) (Justice Scalia captured almost a decade ago the foundational difference between the "computer-processing facilities" that process data from distant servers and websites and the downstream physical network transmission that "merely serves as a conduit for the information services that have already been 'assembled' by the [ISP].").

[2] See NTCA response to White Paper 1 at p 2.

By contrast, underlying networks need not distinguish between types of data in performing their core functions of processing and transmission, and they are essential to enabling sustainable growth in service competition. Accordingly, there must be a separate assessment of competition at the network layer to determine if bottlenecks or limits in facilities warrant rules that prevent lack of competition at the network level from hindering the array of services en route to the discerning consumer. It should matter not if the transmittal of data occurs in IP, TDM, ATM, or Frame Relay or the nature of the service(s) that may happen to ride atop the network.[3] If the function performed is the transmission of data from point A to point Z, then the technological means by which those data make that journey should be irrelevant to regulation of the network or an assessment of competition.[4]

There should be special account taken, however, of the challenges associated with deploying networks that enable these services and applications – and thus competition – in rural areas. As noted in the introduction to these Comments, rural areas present special difficulties in network deployment. The challenges of distance and density have made it such that, for the vast majority of the rural landscape, the only networks in place are those that have been deployed by smaller, community-based rural telecom providers who have leveraged a mix of private capital, Rural Utilities Service programs, and federal universal service fund programs to make broadband available to over 90% of rural consumers today. Well-tailored carrier of last resort or comparable obligations, paired with sufficient and predictable universal service support, are essential to ensure that the broadband-capable networks needed to deliver cutting-edge services and applications are installed, operational, and sustainable throughout rural America.

Competition at the network layer in rural areas tends to exist, if at all, only within the confines of town franchise boundaries or along interstate highways where a sufficient number of

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[3] Id. at 8.
[4] *Id*.

vehicles pass by to create demand justifying placement of towers. The fact that the "market" tends to facilitate network deployment only where distance and density can be overcome clearly underscores the need to extract and conduct separately any assessment of competition at the service layer from competition at the network layer; these "market" dynamics also highlight the need to ensure that any statutory or regulatory framework that is adopted provides sufficient and predictable support for those rural networks that are foundational in enabling competition at the service layer – or, indeed, in ensuring that any level of service at all is available to consumers consistent with our national policy of universal service.

2. ***What principles should form the basis of competition policy in the oversight of the modern communications ecosystem?***

   See answer to Question 1.

3. ***How should intermodal competition factor into an analysis of competition in the communications market?***

The prospect of intermodal competition points to the need for comparable regulation of functionally equivalent retail services coupled with a framework that ensures seamless interconnection of the broadband networks that help make intermodal competition between services possible.

For example, it would appear based upon marketplace behavior that mobile voice, landline voice, and VoIP are perceived by consumers as functional equivalents that should be viewed as competitive with one another and subject to the same degree of regulation. On the other hand, it is clear from a review of the marketplace that wired and mobile broadband are not substitutes and that consumers are not interested in cutting one or the other to save money – they want both. Wired broadband allows the consumer to send large amounts of data from home or the office, and wireless allows them to stay connected wherever they go through voice, texting, and surfing the web. Moreover, as long as wireless broadband is subject to differing regulatory

regimes, such as more relaxed net neutrality requirements, then such broadband certainly cannot be viewed as a competitive alternative to wired broadband. Indeed, in its most recent wireless competition report, the FCC stated that "Mobile wireless Internet access service could provide an alternative to wireline service for consumers who are *willing to trade speed for mobility*, as well as consumers who are relatively indifferent with regard to the attributes, performance, and pricing of mobile and fixed platforms."[5]

Further, even the best wireless services and the most robust wireless networks rely upon the nearby presence of wired connections to function. The more data demands that are placed on mobile broadband, the more frequency bands and towers with greater backhaul are needed to handle such data. Similarly, wi-fi relies entirely upon a nearby wired connection to a router that makes limited mobility possible. A strong neighborhood wi-fi system could perhaps allow for greater mobility – analogous to that offered by cell towers on a localized basis – but, here again, capacity will be limited and certainly cannot support businesses, anchor institutions, or even many demands and applications for which broadband is used at home today.

Thus, while many services that run on different platforms could be considered functional equivalents when determining the competitiveness of a service market, wired and mobile broadband are appropriately viewed as complementary, and treated as such by consumers. And given that even the most "mobile" of services must seek out wired networks as soon as possible – especially as data demands increase over time – it is essential not to confuse potential intermodal competition at the service level with the need for an underlying wireline network robust enough to handle data demands of all kinds. The distinction is crucial for rural areas that rely on universal service support and need greater capacity than what mobile broadband offers in order to fully take advantage of the Internet.

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[5] *See* In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services, WT Docket No. 11-186, FCC 13-34, at p 26 (2013) (emphasis added).

4. Some have suggested that the FCC be transitioned to an enforcement agency, along the lines of the operation of the Federal Trade Commission, rather than use broad rulemaking authority to set rules a priori. What role should the FCC play in competition policy?

Well-functioning and seamlessly interconnected networks are too important to enabling consumer benefits and robust competition in the communications sector to transform the FCC into an enforcement agency only. If, for example, networks of competing or complementary providers are not required as a threshold matter to interconnect on fair and reasonable terms pursuant to a clearly defined regulatory framework, then fulfillment of the Core Principles of competition, consumer protection, and universal service as outlined in NTCA's Comments on Committee White Paper No. 1[6] will be imperiled at both the service and the network layer.

As noted in NTCA's 2012 IP evolution petition: if regulatory oversight stifles investment, the uncertainty of a regulatory vacuum and a lack of clear "ground rules" are likely to stifle investment even more – and far more likely to leave consumers in the lurch and undermine investment in the IP evolution.[7] The ultimate goal of the existing framework – making available "a rapid, efficient, Nation-wide and world-wide wire and radio communication with adequate facilities at reasonable charges" – must apply with equal force regardless of the technology used to achieve such communication.[8]

Making the FCC an enforcement-only agency would endanger fulfillment of the Core Principles, plus it is unclear how such an approach would work in light of legal mandates that compel state regulators and consumer advocates to protect the interests of their own consumers.[9] In the event of market failure or disaster, it's unlikely the regulatory foundation could be rebuilt

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[6] *See* NTCA response to White Paper 1 at p 2.
[7] *See* In the Matter of Petition of the National Telecommunications Cooperative Association for a Rulemaking to Promote and Sustain the Ongoing TDM-to-IP Evolution, GN Docket No. 12-353 at p 8 (2012).
[8] *Id.* at 11.
[9] *Id.* at 7.

quickly enough to address the fallout.[10] Instead, the Commission must maintain a firm and clear regulatory foundation, while coordinating with state counterparts to examine specific rules for potential replacement, repair, or removal where their utility or effectiveness is in question.[11] Congressional oversight of the FCC will be essential to ensure the agency is transparent in its process, responsive to consumers and providers, and promoting investment and innovation through forward-looking policy.

A clear and well-defined regulatory framework for purposes of interconnecting networks would provide regulatory certainty, while pairing such regulation with more common-sense, equitable treatment of comparable services and clear but reasonably applied consumer protection requirements will encourage innovators and entrepreneurs to invest time and resources and expect returns if their ideas win over consumers.[12] Clear "rules of the road" for interconnection of networks and the exchange of data will be essential to ensuring the seamless transmission of data in accordance with customer expectations.[13] FCC enforcement of perceived bad actors after the fact, with little guidance up front in the form of clear regulations, would only create regulatory uncertainty as to the standards that govern and ultimately undermine innovation, consumer protection, competition, and universal service.

5. ***What, if any, are the implications of ongoing intermodal competition at the service level on the Commission's authority? Should the scope of the Commission's jurisdiction be changed as a result?***

   See answer to Question 3.

[10] *Id.*
[11] *Id.* at 10.
[12] *See* NTCA response to White Paper 1 at p 9.
[13] *Id.* at 13.

6. ***What, if any, are the implications of ongoing intermodal competition on the role of the FCC in spectrum policy?***

Intermodal competition and consumer choice will be limited, especially in rural areas, if the prime low-band spectrum is held only by the largest carriers who tend to build sparingly in rural areas with service along interstate highways and in some rural towns. Local carriers interested in serving local markets need the opportunity to obtain wireless spectrum, whether through bidding on smaller spectrum blocks or some other appropriate policy.

7. ***Competition at the network level has been a focus of FCC regulation in the past. As networks are increasingly substitutes for one another, competition between services has become even more important. Following the Verizon decision, the reach of the Commission to regulate "edge providers" on the Internet is the subject of some disagreement. How should we define competition among edge providers? What role, if any, should the Commission have to regulate edge providers – providers of services that are network agnostic?***

An edge provider that is offering something like voice should be treated no differently than telephone or mobile voice. Further, content/edge application providers have the same ability and incentive to block services as network providers. From the consumer's perspective, it matters little if the network provider or the content provider is blocking access to desired content. The market is two-sided when it comes to delivering consumers access to content or applications, and it is important that reciprocal obligations of parties on both sides of that market be considered in deciding what is needed to meet reasonable consumer expectations.

It is also not entirely true that "networks are increasingly substitutes for one another." As described above, mobile networks are hardly substitutes for wired networks – to the contrary, mobile networks are wholly dependent upon wired networks to handle increasing amounts of data over time. Moreover, even within the "broadband ecosystem," different network components rely upon one another rather than competing with one another, and the "market" for use of such networks is hardly transparent. Opaque peering policies, confidential transit rates, terms, and conditions, and limited choices for middle mile access from many rural areas back to

gateways make it such that "competition" can be hard to discern to the extent it might exist at all in any given case. Thus, it is important that any potential changes to existing statutory or regulatory frameworks not proceed from the mistaken premise that networks are somehow interchangeable and fully competitive. Regulatory backstops to ensure seamless connectivity and greater transparency in markets for interconnection remain essential to serve the Core Principles of competition, consumer protection, and universal service.

8. ***What regulatory construct would best address the changing face of competition in the modern communications ecosystem and remain flexible to address future change?***

A regulatory construct that focuses first on functionality of service or application (rather than the self-professed classification of the provider) and then separately on the rights and duties associated with seamless network transmission of data (regardless of wired, wireless, etc.) would provide the flexibility and regulatory certainty necessary to encourage innovation and growth and promote investment in broadband-capable networks.

9. ***Given the rapid change in the competitive market for communications networks and services, should the Communications Act require periodic reauthorization by Congress to provide opportunity to reevaluate the effectiveness of and necessity for its provisions?***

No. Investors and innovators need regulatory certainty to continuously produce technological advancements, and particularly in rural areas, the time frame for return on investment in networks is measured in decades due to the high-costs and spare population within those "markets." Regular reauthorizations that take several years to move through Congress and which could ultimately result in sweeping changes to the law would likely undermine a sense of certainty in the legal framework underpinning those investments and efforts at innovation. Regulators can and should instead be tasked with periodic reviews and reports to help Congress determine whether and to what degree reauthorization or some other review of given statutory provisions may be necessary.

CONCLUSION

The IP evolution calls for a fresh look at regulating the communications sector and assessing competition. By distinguishing between retail services and networks for purposes of regulation and assessing competition, Congress can produce a sustainable regulatory framework (with appropriate oversight after passage) that allows the FCC to treat functionally equivalent services equally with light-touch regulation that guarantees consumer protection and public safety, while ensuring the underlying network continues to serve as a platform for competition and innovation at the service level by sending data to consumers reliably and efficiently. This IP-era framework will help regulators make realistic assessments of competition among services to ensure fulfillment of the Core Principles by directing support to the truly unserved and underserved.

Convergence, Competition, and Consumer Protection Should Dictate Communications Policy

Convergence is the hallmark of the modern communications marketplace. It may have made sense to view and regulate various communications platforms as distinct silos back in 1996, but today the realities of this industry are far different from what the technology and telecommunications sectors looked like eighteen years ago.

Google has begun rolling out fiber optic networks to select communities across the country. Facebook is exploring ways to deliver voice service over mobile devices. AT&T and Verizon both offer video services, and Comcast is one of the most popular content providers in the nation. The very definition of competition has changed, and it has less to do with the provider and more to do with the services being offered.

Broadband has enabled dramatic shifts in the communications sector, and the fine lines between Internet service providers and Edge players blur more and more each and every day. The dynamism of this sector has resulted from the very nature of broadband as an information service. Unencumbered by onerous regulatory structures that would have limited its scope, scale, and possibilities, broadband has flourished over the past ten years. Therefore, today's landscape is highly competitive expressly because the very nature of broadband enables it.

As Congress seeks to define competition in an ever-changing communications landscape, it should focus first and foremost on the service being delivered to the end-user. Under the current regulatory regime, traditional ISPs are treated differently from edge providers. In addition to its online search and advertising tools, Google offers both voice services and broadband. It effectively operates as both ISP and telephone carrier in these instances. And yet, it is accorded different treatment because its first order of business is as the world's largest Internet search engine.

The disparate treatment afforded to communications providers because of the labels they were accorded in the 1996 Telecommunications Act may undermine continued growth and investment within the broadband sector. Currently, companies are incentivized to build faster, more robust networks because there's a possibility that they may hit on the next big thing and rise to the top of the market as the next great innovator.

If the possibilities for great things to come is artificially limited, or the cards seemed stacked against certain players merely because they face a particular regulatory treatment based on one of the many services they offer consumers, an on-going desire to invest in network maintenance and build out may fall to the wayside.

To consumers, it matters not what kind of company provides broadband service, so long as it's affordable and reliable. Regulatory structures should be the same way. Greater emphasis should be placed on how a service is used rather than on who is providing that service.

In addition to making more equitable the treatment of various broadband service providers – whether we're talking about cable, DSL, wireless, or fiber optic networks – defining competition based on the ultimate service being rendered makes the market more competitive. If service providers do not face certain advantages or disadvantages because of what their primary business is, or what their traditional classification may be, there will be a greater tendency to focus on providing better service at more affordable rates because there are more companies playing in the same space, and subject to the same rules, to compete with for consumer advantage.

Without doubt, competition policy should be technology neutral. And the critical inquiry about how and what kind of rules to apply to competitors in this space should start with one simple question – what is the benefit or harm to the consumer? A well thought out competition policy has the ability to provide significant consumer protections. If the focus is on the consumer experience, issues pertaining to rates of return, variety of service offerings, and cost of services take on a different light.

Likewise, companies that invest in critical broadband infrastructure should be treated favorably, because without that investment, consumers will lack the ability to access the high-speed, high-quality broadband that we, as a culture, have decided is so critical to the ways we live, work, and play. By the same token, companies that exhaust network capacity by engaging in large and frequent file transfers across the Internet should be made to invest in infrastructure as well so that consumers do not ultimately bear the burden of paying inflated costs or additional premiums to maintain their use of an essential service like broadband, especially when they're not as well-situated as highly profitable commercial interests to pay that price.

As wonderful a resource as it is, broadband is not free. The private sector has invested handsomely in developing this space, and a pro-competitive policy that treats providers of broadband services similarly, and requires them to invest in infrastructure to the extent that they use it, provides a fair approach that will uphold the public interest.

To ensure that competition continues to be abundant in the communications sector, and that policy pertaining to it is implemented fairly, the Federal Communications Commission should be primed to take on a review and enforcement role, where necessary. As the legislative arm of these United States, Congress is imbued with the power and authority to set regulatory frameworks for the broadband sector. The FCC, as an administrative agency, has the duty to ensure those laws are upheld, and it can do that by monitoring industry practices for anti-competitive behavior, adjudicating disputes between parties who claim there has been a competitive violation, and by issuing policy statements offering guidance on the kinds of conduct that qualify as anti-competitive.

Competition is key to a thriving communications marketplace. But lip service without oversight does not do anyone any good. In a market where convergence is key, keeping the consumer experience in mind can help guide Congress to rational competition policies.

Dear Members of Congress,

After my career as a professional NFL football player, I took on a new challenge: starting my own business called PostShareSell. Without ubiquitous broadband access this would not have been possible. With the wide availability of different Internet technologies, and competition among providers, platforms, products and services, we were able to build an online social commerce platform that reaches thousands of people across the country. There are many entrepreneurs like me, who have been able to realize their business goals through the power of the Internet. As the Energy and Commerce Committee takes on the important task of updating the communications act, please remember the implications to businesses and consumers across the country. To help guide your decisions, I have included an op-ed I wrote for Tampa, Florida's Weekly Challenger about the importance of broadband to minority entrepreneurs.

Thank you,

Jovan Haye
CEO and Founder
PostShare
Tampa, FL
http://www.postshareSell.com/

http://theweeklychallenger.com/fcc-can-help-minority-entrepreneurs-by-supporting-broadband/

FCC can help minority entrepreneurs by supporting broadband
Posted on May 1, 2014

BY JOVAN HAYE

The recent SXSW Festival brought together business owners from all over the world who owe much of their success to an increasingly connected world. Though it may not have been at the forefront of the festival, the proliferation of high-speed Internet has also been a major boon to minority entrepreneurs right here in Florida. That's because broadband makes it easier than ever to start a business and to grow one's consumer base far beyond the borders of the state.
As we work to empower our community for the future, we should look to broadband as one powerful tool to accomplish this mission.
Retail is but one industry where minority entrepreneurs have been boosted by broadband. Unlike years past, aspiring retailers no longer have to come up with the massive sums needed for overhead costs, such as rent for a storefront. Now one's own home can serve as a storefront, with the living room its factory and distribution center.
Before the proliferation of high-speed Internet, a successful shop had to be in an area with heavy traffic, making retail locations prohibitively expensive. With broadband comes ready access to a national clientele – an account on a site like Craigslist, eBay or Etsy is all that is needed for retail success.

Online vendors can also rely on their customers to do their advertising for them, eliminating the need for costly ad agencies. My company, PostShareSell, has taken this idea one step further.

From our home base in Tampa, we have created an online retail service that employs social media as part of a vendor's overall strategy (social commerce), allowing users to share their goods with friends and family on Facebook, Twitter and other social media platforms. The idea is that the people in one's social network are the most likely to buy one's goods. To encourage sharing, the site offers prizes and contests on a regular basis.

Innovative companies like ours are flourishing all over the web. From 2000 to 2011, for example, minority self-employment in Florida rose by 53 percent – a larger increase than any other demographic. These trailblazers boost the overall economy and lower barriers of entry for other small businesses, making it easier for them to stand on their own two feet. Their initiative has been one reason for the success of black-owned businesses, not just in our state but also around the country, which have grown three times faster than the national average.

There is more room to grow, however. Above all, we need to get even more of our community online. A recent Pew survey found that, in 2014, computer use among African-Americans stood at only 77% – below the national average.

Getting more minorities connected to broadband is vital to the success of future business owners in our community. For one thing, the more individuals and families go online, the larger the pool of potential customers a new business can reach. In addition, giving minority youth access to a computer and high-speed Internet helps build digital literacy skills that can be parlayed into a successful new business venture.

With minorities making up nearly half of Florida's population – 43 percent, according to the 2010 Census – the future of Florida's economy truly hinges on the fate of its minority entrepreneurs.

To build on the progress we've made so far, we will need even more private investment in our nation's broadband infrastructure. Research by the Progressive Policy Institute found that last year, the six largest broadband providers invested over $50 billion in their infrastructure. This investment strengthens networks, forcing competitors to increase investments and improve services. The circle of investment and competition has resulted in different companies and technologies—like satellite, phone lines, cable, wireless and fiber—bringing broadband services to consumers across the country.

To continue to promote this investment, we need to stay away from heavy-handed Internet regulations that discourage investment and innovation. Today, we face a turning point for our country's broadband networks. Members of Congress have expressed interest in updating the Communications Act for the first time since 1996 – a time when iPhones did not yet exist and the Internet was generally accessed through dial-up connections. Under the act, services like "telephone" and "cable" are separated into different regulatory silos. This segmented regulatory system is out of step with today's reality, where video, voice and data can be transmitted along the same network. The technology advancements we are experiencing today has been driven by cable, telephone, fiber-optic, wireless and satellite companies all competing with each other to provide high-speed Internet service.

As we continue to rethink the rules that govern our nation's networks, we must remember how much minorities stand to gain from accessible high-speed Internet. By promoting investment into broadband, we can help even more aspiring business owners grow into successful models for the community.

Jovan Haye, a former Tampa Bay Buccaneer, is the CEO of PostShareSell, an online social commerce company based in Tampa.

June 13, 2014

Hon. Fred Upton
Chairman
Energy and Commerce Committee
US House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Hon. Greg Walden
Chairman
Communications and Technology Subcommittee
Energy and Commerce Committee
US House of Representatives
2125 Rayburn House Office Building
Washington, DC 20515

Re: Communications Act Update, Competition Policy

Dear Congressmen Upton and Walden:

I write in response to your request for insight on competition policy in the context to update the Communications Act.

My background: I have lived and worked in Silicon Valley since 1995. I'm the author of ten books on SEO and digital marketing. I manage Global SEO at Cisco. My books have been published in the USA, China, Taiwan, Mexico, France, Germany, the UK, Denmark, Sweden, Finland, Italy, and Spain. The publishers include McGraw-Hill (USA), Tsinghua University Press (China), and Editorial Jus (Mexico). I've worked at SGI, SUN, Oracle, Brio, Acxiom, and over 25 startups. I co-founded three Silicon Valley startups (two with successful exits) and I'm on the advisory boards of startups such as ClassJunky.com, an education startup in San Francisco; Entefy.com, a social media company in Palo Alto; EzyInsights.com, a social analytics company in Helsinki; and ShanghaiValley.com, an incubator in China.

From 2010 to 2012, I was the director for digital marketing at Acxiom. Acxiom manages marketing for 350 of the Fortune 500 corporations.

In 1998, I was employee #12 at Dialpad.com, where I was the webmaster. Dialpad was the first VOIP service. The website grew from zero to 16 million users in one year and was the fastest-growing company in history at the time. We were in the top 50 largest websites. We grew to over 400 employees in two years.

One of the drivers of competition is innovation. People outside of Silicon Valley think it is the center of innovation. In reality, the great innovations in computering were essentially made 40 years ago. What we have seen in the last two decades has been incremental technological innovation. The development of computers, integrated chips, servers, storage, and so on generally came to an end by the late 1990s. Innovation today is mostly in consumer products and services: Google, Facebook, Twitter, and so on are primarily marketing and advertising services. Apple makes entertainment devices for consumers. True

technological and engineering advances have slowed down because we've reached the physical limits of integrated circuits and memory storage.

Short-sighted venture capital companies now put their money into social media sites with hopes of a quick payoff, often measured in mere months. They are reluctant to invest in deep innovation that can take decades to produce results, if any. This short-term, quick profits attitude is hurting our long-term competitive position.

I see journalists at Huff Post, Ars Technica, Wired, Verge, Vox, and others are attempting to paint net neutrality as a significant issue, but this is their outsiders' view. There was also this recent stunt in which 100 tech companies signed a letter in support of net neutrality to the Federal Communications Commission, but I doubt the support of this issue goes deep in most of these organizations. I work with all levels of Silicon Valley ecosystem: I work at Cisco; I'm an advisor to startups; I work with angel investors. Net neutrality has never been something we discuss. It has never come up in conversations or meetings. The exception is Netflix which uses net neutrality as a PR/policy strategy.

Competition is a global issue, not a national issue. The danger for the US if it does not get its communications policy right is that it will be eclipsed by other countries in the digital and mobile domains. There are 700 million smart phones in China, which means the US will never catch up in numbers with mobile in China. Mobile ecommerce in China passed the $335 billion level last year. Alibaba is twice the size of eBay and Amazon combined and may be the first trillion dollar company. WeChat, a sort of Facebook+Twitter, has features far ahead of Facebook, including complete ecommerce services. These companies are developing solutions that may become global standards. We might become obligated to adapt to their standards if the US Congress does not develop a modernized communications law equipped for today's Internet age based on dynamic competition.

A major issue for us in Silicon Valley is access to skilled people from other countries. People want to come to Silicon Valley, either as investors, executives, or workers, but it is difficult for them to get visa and residency permits. The restriction of visas doesn't protect American jobs, it reduces jobs. If investors and executives to build more companies here, we would have more jobs.

Sincerely,
Andreas Ramos
4031 Park Blvd.
Palo Alto, CA 94306
[redacted]
[redacted]
Website: Andreas.com

Cc: Rep. Anna Eshoo, via electronic mail

June 13, 2014

Mr. David Redl
Chief Counsel – Communications and Technology
US House Committee on Energy and Commerce
2125 Rayburn HOB
Washington, DC 20515

Dear Mr. Redl:

On December 3, 2013, Chairman Upton and Chairman Walden announced their panels would embark on a year-long initiative to review and ultimately update federal telecommunications policy. On behalf of the Alaska Rural Coalition, CalCom Small Company Committee and Idaho Telecom Alliance (Rural State Association Group – RSAG), GVNW[1] submits the attached comments in response to third white paper competition questions from the Committee on Modernizing the Communication Act.

Alaska Rural Coalition. The companies of the ARC that are participating in this filing[2] serve customers in some of the most extreme regions of the United States. Alaska is a uniquely high cost area within which to provide any telecommunications, whether traditional telephony, mobile or broadband. Much of remote Alaska lacks even the basic infrastructure critical to most telecommunications deployment, such as a road system and an intertied power grid.

CalCom Small Company Committee. The California Communications Association (CalCom) is a statewide non-profit trade association with a rich heritage that dates back to 1917. Its small company members[3] are committed to the effort to build state of the art networks across California.

Idaho Telecom Alliance. The companies in the Idaho Telecom Alliance work collectively to support the advancement of their members and promote services to rural telecommunications subscribers throughout the rugged terrain of Idaho.

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[1] GVNW is a management consulting firm that provides regulatory and legislative advocacy support for communications carriers in rural America.
[2] The ARC members in this filing include Arctic Slope Telephone Association Cooperative, Inc.; Bettles Telephone, Inc.; Bristol Bay Telephone Cooperative, Inc.; Bush-Tell, Inc.; Copper Valley Telephone Cooperative, Inc.; OTZ Telephone Cooperative, Inc.; Alaska Telephone Company; and North Country Telephone, Inc.
[3] TDS is not participating in this White Paper 3 response.

The challenge facing the Committee as it seeks to rewrite federal telecommunications law is to enable broadband to truly be embedded in the national infrastructure while creating a framework of rates so that service and cost are reasonably comparable. This will require universal service provisions to continue to be an important part of any rewrite effort.

In closing, we express our appreciation to Chairman Upton and Chairman Walden for initiating this important review of our federal telecommunications law. The legislative action related to this effort will impact every customer in each of the states.

Please call me on 503-612-4409 or contact me at jsmith@gvnw.com if you have any questions.

Regards,

s/JHS 6/12/14

Jeffry H. Smith
President and CEO

Copy to
Chairman Fred Upton, House Energy and Commerce Committee
Ranking Member Henry Waxman
Chairman Greg Walden, Communications and Technology Subcommittee
Ranking Member Anna G. Eshoo

Mr. Ray Baum

RESPONSE OF THE RURAL STATE ASSOCIATION GROUP (RSAG) TO HOUSE ENERGY AND COMMERCE COMMITTEE

Modernizing the Communications Act
COMPETITION QUESTIONS FOR STAKEHOLDER COMMENT

Due Date of June 13, 2014

We offer responses to the questions posed by the Committee by emphasizing three major points, and reference individual questions as needed in each section. Our three sections for this third white paper focusing on competition issues are shown below.

HOW COMPETITION WILL BE DEFINED IN A BROADBAND WORLD WILL DEPEND ON WHETHER CONGRESS BELIEVES IN A TRULY NATIONAL BROADBAND PLAN

COMPETITION REQUIRES AN APPROPRIATE BALANCE WITH CUSTOMER NEEDS

COMPETITION IN ITS PUREST FORM WILL NOT INCENT A UNIFORM EXPANSION OF BROADBAND CAPABILITY IN BOTH URBAN AND RURAL AREAS AND POLICIES SHOULD ADJUST TO THIS FACT

We appreciate the opportunity to offer input on these competition issues and look forward to the remainder of the white papers that the Committee intends to release during 2014.

HOW COMPETITION WILL BE DEFINED IN A BROADBAND WORLD WILL DEPEND ON WHETHER CONGRESS BELIEVES IN A TRULY NATIONAL BROADBAND PLAN

First, we share the foundational public policy principles[1] of the Rural State Association Group that guide our responses in every House Energy and Commerce white paper filing:

1 – Affordable broadband should be available to all Americans

2 – Federal universal service support should be sufficient and predictable

3 – Policies should promote competition while protecting consumers

4 – Public safety and national security should continue to be a priority

5 – Comparable rates for comparable services

The third principle is directly relevant to the responses to this third white paper.

The Committee must determine in its effort to modernize the Communications Act whether the desire to protect consumers in a broadband paradigm is still a relevant public policy concept. We respectfully submit that it remains an important cornerstone for any attempt to enact a forward-looking **national** public policy.

As the Federal Communications Commission noted in its Transformation Order at paragraph 175, incumbent local exchange carriers "*generally continue to have carrier of last resort obligations for voice services*" and thus must maintain network infrastructure capable of ensuring service to consumers who request it throughout their designated service area. In practical terms relative to competitive responses to a lack of a business case, ILECs designated as carriers of last resort would in most cases be unable to refuse

[1] We included the first 4 principles in our response to the first white paper and add the fifth in this White Paper.

local phone service to any customer in any area in which they operate and would be unable to discontinue service in an area where there is not another carrier operating.

As the Committee examines both the second sub-question[2] in Q1 as well as the second sub-question[3] in Q4, we respectfully submit that one of the roles that the FCC should continue to play is to ensure that there is ample opportunity for carriers of last resort that are designated in their respective states to fulfill their responsibilities as such with federal policy that protects the interests of consumers that benefit from the carrier of last resort designation as we evolve to the broadband paradigm.

COMPETITION REQUIRES AN APPROPRIATE BALANCE WITH CUSTOMER NEEDS

The third RSAG public policy principle that **Policies should promote competition while protecting consumers** deserves further discussion at this juncture. The second question[4] for stakeholder comment requires a thorough discussion of customer needs in regards to the RSAG third principle.

Most of the attention in the current debate on competition public policy focuses on the bleeding edge of technological progress. For example, on the first page of this instant white paper, the Committee cites an excerpt from the FCC's *15th Report On The Status Of Competition In The Market For The Delivery Of Video Programming* that addresses the most significant trends as "the continuing development, and consumer usage, of time and location shifted viewing of video programming, the expansion of digital and high definition programming, and the progress of the online video industry."

[2] How can we ensure that this definition is flexible enough to accommodate this rapidly changing industry?
[3] What role should the FCC play in competition policy?

[4] What principles should form the basis of competition policy in the oversight of the modern communications ecosystem?

While important to many consumers, the promise of broadband is more than just enhanced entertainment platforms.

The FCC's national broadband plan promised increased efficiencies in the delivery of remote health care[5] for customers that live a long ways from major medical facilities and of course a continued focus on national security[6] and public safety[7] issues. As the Committee seeks to modernize the Communications Act, we respectfully request that public safety, health care and national security issues not be a secondary thought to how fast someone can download a movie or play a video game. Such a balance is a key to the public policy for competition that will meet a multitude of customer needs.

COMPETITION IN ITS PUREST FORM WILL NOT INCENT A UNIFORM EXPANSION OF BROADBAND CAPABILITY IN BOTH URBAN AND RURAL AREAS AND POLICIES SHOULD ADJUST TO THIS FACT

On the second page of this White Paper 3, the Committee offered the following observation: *By dividing the overall regulatory scheme into separate titles based on specific network technologies and services, the Communications Act fails to contemplate or address the convergence and evolution of services in the modern digital era and the impact on the state of competition in the communications ecosystem.* RSAG appends to

[5] Federal Communications Commission, *Connecting America: The National Broadband Plan* (rel. Mar. 16, 2010), at 201. (National Broadband Plan): *Video consultation is especially beneficial for extending the reach of under-staffed specialties to patients residing in rural areas, Tribal areas and health professional shortage areas (HPSAs). . .Remote patient monitoring enables early detection of health problems, usually before the onset of noticeable symptoms. Earlier detection allows earlier treatment and, therefore, better outcomes.*

[6] National Broadband Plan, at 313: *Unfortunately, the United States has not yet realized the potential of broadband to enhance public safety. . . .The United States also faces threats to the resiliency and cybersecurity of its networks. As the world moves online, America's digital borders are not nearly as secure as its physical borders. The country must do better. In a broadband world, there is a unique opportunity to achieve a comprehensive vision for enhancing the safety and security of the American people.*

[7] The fourth RSAG public policy principle is Public safety and national security should continue to be a priority.

this observation by noting that the state of competition is also impacted by geography and company size.

Competition is at a different point on the continuum if you compare the current state of affairs for customers in either Anaheim, California (population 343,298) or Annapolis, Maryland (population 38,620) versus the number of customers served by Arctic Slope Telephone Association Cooperative in Anaktuvak Pass, Alaska, with a population of 332.

In the RSAG response to the first White Paper, we offered a recommendation that regulation be bifurcated for large companies and small companies. Specifically, we stated on page 12 of our response to the first White Paper that:

Changes to FCC structure would necessarily follow with decisions made to the platform used to regulate carriers. For example, if the decision is made to shift from regulation of services to regulation by size of entity, then the Bureau designations at the FCC might well change to Large Company Oversight Bureau (LCOB) and Small Company Oversight Bureau (SCOB).

In this third White Paper, there are several questions posed that lend themselves to a discussion of bifurcation by size of company. For example, question 7 discusses mergers[8] analysis and approval. The types of conditions that may be placed upon willing participants entering into a merger agreement should require careful review before they might be universally applied, especially with regards to additional regulatory reporting burdens. Question 9 discusses how best to address[9] the changing face of competition. As the level and types of competition will evolve differently in different parts of the country, a differentiation based on large versus small companies may be in order.

[8] What, if any, are the implications of ongoing intermodal competition at the service level on the FCC's role in mergers analysis and approval?
[9] What regulatory construct would best address the changing face of competition in the modern communications ecosystem and remain flexible to address future changes?